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Legislative History – Montana Session Law

Chapter: 324 Session L: 2021
Bill Number: SB 233

Checklist of Bill History

History and Final Status Sheet	☒
Introduced Bill	☒
Fiscal Note	☒
Third Reading Bill	☐
Final Version of Bill	☐

House	Senate
Committee: Natural Resources	Committee: Natural Resources
Hearing Date(s): 3/26/21	Hearing Date(s): 2/22/21
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Conference Committee	

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Compiler Notes

Compiled by: SK Marshall

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Notes: Audio/Video recordings can be found here:
<https://sg001-harmony.sliq.net/00309/Harmony/en>

Thank you!



AN ACT GENERALLY REVISING LAWS RELATED TO THE BOARD OF ENVIRONMENTAL REVIEW; REASSIGNING DUTIES AND POWERS OF THE BOARD OF ENVIRONMENTAL REVIEW; TRANSFERRING RULEMAKING AUTHORITY; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTIONS 7-13-4502, 7-13-4513, 7-13-4517, 50-2-116, 75-1-1001, 75-2-105, 75-2-111, 75-2-112, 75-2-201, 75-2-202, 75-2-203, 75-2-204, 75-2-206, 75-2-207, 75-2-211, 75-2-212, 75-2-215, 75-2-217, 75-2-218, 75-2-219, 75-2-220, 75-2-221, 75-2-231, 75-2-234, 75-2-301, 75-2-302, 75-2-422, 75-2-428, 75-5-103, 75-5-106, 75-5-201, 75-5-203, 75-5-222, 75-5-301, 75-5-302, 75-5-303, 75-5-304, 75-5-305, 75-5-307, 75-5-308, 75-5-310, 75-5-311, 75-5-312, 75-5-313, 75-5-315, 75-5-316, 75-5-318, 75-5-401, 75-5-402, 75-5-502, 75-5-514, 75-5-515, 75-5-516, 75-5-802, 75-6-104, 75-6-105, 75-6-106, 75-6-107, 75-6-108, 75-6-112, 75-6-116, 75-6-121, 75-6-131, 75-10-104, 75-10-112, 75-10-115, 75-10-221, 75-11-505, 75-11-508, 75-20-105, 75-20-216, 75-20-406, 75-20-407, 75-20-1001, 75-20-1203, 75-20-1205, 76-3-622, 76-4-1001, 80-15-105, 80-15-110, 80-15-201, 82-4-102, 82-4-112, 82-4-123, 82-4-129, 82-4-205, 82-4-207, 82-4-223, 82-4-226, 82-4-231, 82-4-232, 82-4-234, 82-4-235, 82-4-239, 82-4-254, 82-4-304, 82-4-309, 82-4-321, 82-4-332, 82-4-335, 82-4-338, 82-4-339, 82-4-342, 82-4-371, 82-4-406, 82-4-422, 82-4-437, 82-4-445, 82-4-1001, AND 82-15-102, MCA; REPEALING SECTIONS 75-6-103, 75-10-106, 82-4-111, AND 82-4-204, MCA; AND PROVIDING AN EFFECTIVE DATE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 7-13-4502, MCA, is amended to read:

"7-13-4502. Definitions. As used in this part, unless the context indicates otherwise, the following definitions apply:

(1) "Board of directors" means the board of directors provided for in 7-13-4516 or a joint board of directors provided for in 7-13-4527.

~~(2) "Board of environmental review" means the board of environmental review as provided in 2-15-~~

3502-

~~(3)~~(2) "Commissioners" means the board of county commissioners or the governing body of a city-county consolidated government.

(3) "Department" means the department of environmental quality provided for in 2-15-3501.

(4) "Family residential unit" means a single-family dwelling.

(5) "Fee-assessed units" means all real property with improvements, including taxable and tax-exempt property as shown on the property assessment records maintained by the county, and mobile homes and manufactured homes as defined in 15-24-201.

(6) "Local water quality district" means an area established with definite boundaries for the purpose of protecting, preserving, and improving the quality of surface water and ground water in the district as authorized by this part."

Section 2. Section 7-13-4513, MCA, is amended to read:

"7-13-4513. Insufficient protest to bar proceedings -- resolution creating district -- power to implement local water quality program. (1) The commissioners may create a local water quality district, establish fees, and appoint a board of directors if the commissioners find that insufficient protests have been made in accordance with 7-13-4511 or if the registered voters who reside in the proposed district have approved a referendum as provided in 7-13-4512.

(2) To create a local water quality district, the commissioners shall pass a resolution in accordance with the resolution of intention introduced and passed by the commissioners or in accordance with the terms of the referendum.

(3) The commissioners and board of directors may implement a local water quality program after the program is approved by the ~~board of environmental review~~ department pursuant to 75-5-311."

Section 3. Section 7-13-4517, MCA, is amended to read:

"7-13-4517. Powers and duties of board of directors. The board of directors of a local water quality district, with the approval of the commissioners, may:

(1) develop a local water quality program, to be submitted to the ~~board of environmental review~~

department, for the protection, preservation, and improvement of the quality of surface water and ground water in the district. In developing the program, the board of directors shall consult with the board or boards of supervisors of conservation districts, established as provided in 76-15-201, whose geographical area of jurisdiction is included within the boundaries of the local water quality district.

- (2) implement a local water quality program;
- (3) administer the budget of the local water quality district;
- (4) employ personnel;
- (5) purchase, rent, or lease equipment and material necessary to develop and implement an effective program;
- (6) cooperate or contract with any corporation, association, individual, or group of individuals, including any agency of the federal, state, or local government, in order to develop and implement an effective program;
- (7) receive gifts, grants, or donations for the purpose of advancing the program and acquire, by gift, deed, or purchase, land necessary to implement the local water quality program;
- (8) administer local ordinances that are adopted by the commissioners and governing bodies of the participating cities and towns and that pertain to the protection, preservation, and improvement of the quality of surface water and ground water;
- (9) apply for and receive from the federal government or the state government, on behalf of the local water quality district, money to aid the local water quality program;
- (10) borrow money for assistance in planning or refinancing a local water quality district and repay loans with the money received from the established fees; and
- (11) construct facilities that cost not more than \$5,000 and maintain facilities necessary to accomplish the purposes of the district, including but not limited to facilities for removal of water-borne contaminants; water quality improvement; sanitary sewage collection, disposal, and treatment; and storm water or surface water drainage collection, disposal, and treatment."

Section 4. Section 50-2-116, MCA, is amended to read:

"50-2-116. Powers and duties of local boards of health. (1) In order to carry out the purposes of

the public health system, in collaboration with federal, state, and local partners, each local board of health shall:

- (a) appoint and fix the salary of a local health officer who is:
 - (i) a physician;
 - (ii) a person with a master's degree in public health; or
 - (iii) a person with equivalent education and experience, as determined by the department;
- (b) elect a presiding officer and other necessary officers;
- (c) employ qualified staff;
- (d) adopt bylaws to govern meetings;
- (e) hold regular meetings at least quarterly and hold special meetings as necessary;
- (f) identify, assess, prevent, and ameliorate conditions of public health importance through:
 - (i) epidemiological tracking and investigation;
 - (ii) screening and testing;
 - (iii) isolation and quarantine measures;
 - (iv) diagnosis, treatment, and case management;
 - (v) abatement of public health nuisances;
 - (vi) inspections;
 - (vii) collecting and maintaining health information;
 - (viii) education and training of health professionals; or
 - (ix) other public health measures as allowed by law;
- (g) protect the public from the introduction and spread of communicable disease or other conditions of public health importance, including through actions to ensure the removal of filth or other contaminants that might cause disease or adversely affect public health;
- (h) supervise or make inspections for conditions of public health importance and issue written orders for compliance or for correction, destruction, or removal of the conditions;
- (i) bring and pursue actions and issue orders necessary to abate, restrain, or prosecute the violation of public health laws, rules, and local regulations;
- (j) identify to the department an administrative liaison for public health. The liaison must be the local health officer in jurisdictions that employ a full-time local health officer. In jurisdictions that do not employ a full-

time local health officer, the liaison must be the highest ranking public health professional employed by the jurisdiction.

(k) subject to the provisions of 50-2-130, adopt necessary regulations that are not less stringent than state standards for the control and disposal of sewage from private and public buildings and facilities that are not regulated by Title 75, chapter 6, or Title 76, chapter 4. The regulations must describe standards for granting variances from the minimum requirements that are identical to standards promulgated by the ~~board of environmental review~~ department of environmental quality and must provide for appeal of variance decisions to the department of environmental quality as required by 75-5-305. If the local board of health regulates or permits water well drilling, the regulations must prohibit the drilling of a well if the well isolation zone, as defined in 76-4-102, encroaches onto adjacent private property without the authorization of the private property owner.

(2) Local boards of health may:

(a) accept and spend funds received from a federal agency, the state, a school district, or other persons or entities;

(b) adopt necessary fees to administer regulations for the control and disposal of sewage from private and public buildings and facilities;

(c) adopt regulations that do not conflict with 50-50-126 or rules adopted by the department:

(i) for the control of communicable diseases;

(ii) for the removal of filth that might cause disease or adversely affect public health;

(iii) subject to the provisions of 50-2-130, for sanitation in public and private buildings and facilities that affects public health and for the maintenance of sewage treatment systems that do not discharge effluent directly into state water and that are not required to have an operating permit as required by rules adopted under 75-5-401;

(iv) subject to the provisions of 50-2-130 and Title 50, chapter 48, for tattooing and body-piercing establishments and that are not less stringent than state standards for tattooing and body-piercing establishments;

(v) for the establishment of institutional controls that have been selected or approved by the:

(A) United States environmental protection agency as part of a remedy for a facility under the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9601, et seq.; or

(B) department of environmental quality as part of a remedy for a facility under the Montana Comprehensive Environmental Cleanup and Responsibility Act, Title 75, chapter 10, part 7; and

(vi) to implement the public health laws; and

(d) promote cooperation and formal collaborative agreements between the local board of health and tribes, tribal organizations, and the Indian health service regarding public health planning, priority setting, information and data sharing, reporting, resource allocation, service delivery, jurisdiction, and other matters addressed in this title.

(3) A local board of health may provide, implement, facilitate, or encourage other public health services and functions as considered reasonable and necessary."

Section 5. Section 75-1-1001, MCA, is amended to read:

"75-1-1001. Penalty factors. (1) In determining the amount of an administrative or civil penalty to which subsection (4) applies, the department of environmental quality or the district court, as appropriate, shall take into account the following factors:

(a) the nature, extent, and gravity of the violation;

(b) the circumstances of the violation;

(c) the violator's prior history of any violation, which:

(i) must be a violation of a requirement under the authority of the same chapter and part as the violation for which the penalty is being assessed;

(ii) must be documented in an administrative order or a judicial order or judgment issued within 3 years prior to the date of the occurrence of the violation for which the penalty is being assessed; and

(iii) may not, at the time that the penalty is being assessed, be undergoing or subject to administrative appeal or judicial review;

(d) the economic benefit or savings resulting from the violator's action;

(e) the violator's good faith and cooperation;

(f) the amounts voluntarily expended by the violator, beyond what is required by law or order, to address or mitigate the violation or impacts of the violation; and

(g) other matters that justice may require.

(2) After the amount of a penalty is determined under subsection (1), the department of environmental quality or the district court, as appropriate, may consider the violator's financial ability to pay the penalty and may institute a payment schedule or suspend all or a portion of the penalty.

(3) The department of environmental quality may accept a supplemental environmental project as mitigation for a portion of the penalty. For purposes of this section, a "supplemental environmental project" is an environmentally beneficial project that a violator agrees to undertake in settlement of an enforcement action but which the violator is not otherwise legally required to perform.

(4) This section applies to penalties assessed by the department of environmental quality or the district court under Title 75, chapters 2, 5, 6, 8, 11, and 20; Title 75, chapter 10, parts 2, 4, 5, and 12; and Title 76, chapter 4.

(5) ~~The board of environmental review and the~~ department of environmental quality may, ~~for the statutes listed in subsection (4) for which each has rulemaking authority,~~ adopt rules to implement this section."

Section 6. Section 75-2-105, MCA, is amended to read:

"75-2-105. Confidentiality of records. (1) Records or other information concerning air pollutant sources that are furnished to or obtained by the ~~board or~~ department are a matter of public record and open to public use. However, any information unique to the owner or operator of an air pollutant source that would, if disclosed, reveal methods or processes entitled to protection as trade secrets must be maintained as confidential if so determined by a court of competent jurisdiction. The owner or operator shall file a declaratory judgment action to establish the existence of a trade secret if the owner or operator wishes the information to enjoy confidential status. The department must be served in the action and may intervene as a party in the action. A trade secret not intended to be public when submitted to the ~~board or~~ department must be submitted in writing and clearly marked as confidential. However, emission data and operating permits issued by the department pursuant to 75-2-217 through 75-2-219 may not be considered confidential for the purposes of this section.

(2) This section does not prevent the use of records or information by the ~~board or~~ department in compiling or publishing analyses or summaries relating to the general condition of the outdoor atmosphere if the analyses or summaries do not identify an owner or operator or reveal information otherwise made

confidential by this section."

Section 7. Section 75-2-111, MCA, is amended to read:

"75-2-111. Powers of board. The board shall, subject to the provisions of 75-2-207:

~~(1) adopt, amend, and repeal rules for the administration, implementation, and enforcement of this chapter, for issuing orders under and in accordance with 42 U.S.C. 7419, and for fulfilling the requirements of 42 U.S.C. 7420 and regulations adopted pursuant to that section, except that, for purposes other than agricultural open burning, the board may not adopt permitting requirements or any other rule relating to:~~

~~(a) any agricultural activity or equipment that is associated with the use of agricultural land or the planting, production, processing, harvesting, or storage of agricultural crops by an agricultural producer and that is not subject to the requirements of 42 U.S.C. 7475, 7503, or 7661a;~~

~~(b) a commercial operation relating to the activities or equipment referred to in subsection (1)(a) that remains in a single location for less than 12 months and is not subject to the requirements of 42 U.S.C. 7475, 7503, or 7661a; or~~

~~(c) forestry equipment and its associated engine used for forestry practices that remain in a single location for less than 12 months and are not subject to the requirements of 42 U.S.C. 7475, 7503, or 7661a;~~

~~(2)~~(1) hold hearings relating to any aspect of or matter in the administration of this chapter at a place designated by the board. The board may compel the attendance of witnesses and the production of evidence at hearings. The board shall designate an attorney to assist in conducting hearings and shall appoint a reporter who must be present at all hearings and take full stenographic notes of all proceedings, transcripts of which will be available to the public at cost.

~~(3)~~(2) issue orders necessary to effectuate the purposes of this chapter;

~~(4) by rule require access to records relating to emissions;~~

~~(5) by rule adopt a schedule of fees required for permits, permit applications, and registrations consistent with this chapter;~~

~~(6)~~(3) have the power to issue orders under and in accordance with 42 U.S.C. 7419."

Section 8. Section 75-2-112, MCA, is amended to read:

"75-2-112. Powers and responsibilities of department. (1) The department is responsible for the administration of this chapter.

(2) Subject to the provisions of 75-2-207, the department shall:

(a) adopt, amend, and repeal rules for the administration, implementation, and enforcement of this chapter, and for fulfilling the requirements of 42 U.S.C. 7420 and regulations adopted pursuant to that section, except that, for purposes other than agricultural open burning, the department may not adopt permitting requirements or any other rule relating to:

(i) any agricultural activity or equipment that is associated with the use of agricultural land or the planting, production, processing, harvesting, or storage of agricultural crops by an agricultural producer and that is not subject to the requirements of 42 U.S.C. 7475, 7503, or 7661a;

(ii) a commercial operation relating to the activities or equipment referred to in subsection (2)(a)(i) that remains in a single location for less than 12 months and is not subject to the requirements of 42 U.S.C. 7475, 7503, or 7661a; or

(iii) forestry equipment and its associated engine used for forestry practices that remain in a single location for less than 12 months and are not subject to the requirements of 42 U.S.C. 7475, 7503, or 7661a;

~~(e)~~(b) issue orders necessary to effectuate the purposes of this chapter;

~~(d)~~(c) by rule require access to records relating to emissions; and

~~(e)~~(d) by rule adopt a schedule of fees required for permits, permit applications, and registrations consistent with this chapter.

~~(2)~~(3) The department shall:

(a) by appropriate administrative and judicial proceedings, enforce orders issued by the department or the board;

(b) secure necessary scientific, technical, administrative, and operational services, including laboratory facilities, by contract or otherwise;

(c) prepare and develop a comprehensive plan for the prevention, abatement, and control of air pollution in this state;

(d) encourage voluntary cooperation by persons and affected groups to achieve the purposes of this chapter;

(e) encourage local units of government to handle air pollution problems within their respective jurisdictions on a cooperative basis and provide technical and consultative assistance for this. If local programs are financed with public funds, the department may contract with the local government to share the cost of the program. However, the state share may not exceed 30% of the total cost.

(f) encourage and conduct studies, investigations, and research relating to air contamination and air pollution and their causes, effects, prevention, abatement, and control;

(g) determine, by means of field studies and sampling, the degree of air contamination and air pollution in the state;

(h) make a continuing study of the effects of the emission of air contaminants from motor vehicles on the quality of the outdoor atmosphere of this state and make recommendations to appropriate public and private bodies with respect to this;

(i) collect and disseminate information and conduct educational and training programs relating to air contamination and air pollution;

(j) advise, consult, contract, and cooperate with other agencies of the state, local governments, industries, other states, interstate and interlocal agencies, the United States, and any interested persons or groups;

(k) consult, on request, with any person proposing to construct, install, or otherwise acquire an air contaminant source or device or system for the control thereof concerning the efficacy of this device or system or the air pollution problems which may be related to the source, device, or system. Nothing in this consultation relieves a person from compliance with this chapter, rules in force under it, or any other provision of law.

(l) accept, receive, and administer grants or other funds or gifts from public or private agencies, including the United States, for the purpose of carrying out this chapter. Funds received under this section shall be deposited in the state treasury to the account of the department.

~~(3)(4)~~ The department may assess fees to the applicant for the analysis of the environmental impact of an application to redesignate the classification of any area, except those areas within the exterior boundaries of a reservation of a federally recognized Indian tribe, under the classifications established by 42 U.S.C. 7470 through 7479 (prevention of significant deterioration of air quality). The determination of whether or not a fee will be assessed is to be on a case-by-case basis."

Section 9. Section 75-2-201, MCA, is amended to read:

"75-2-201. Classifying and reporting air contaminant sources. (1) The ~~board~~department may classify air contaminant sources ~~which that~~ in its judgment may cause or contribute to air pollution according to levels and types of emissions and other characteristics ~~which that~~ relate to air pollution and may require reporting for any such class or classes. ~~Such~~The classifications ~~shall~~must be made with special reference to effects on health, economic and social factors, and physical effects on property and may be applied to the state as a whole or to any designated area.

(2) Any person operating or responsible for the operation of air contaminant sources of any class for which the rules of the ~~board~~department may require reporting shall make reports containing ~~such any~~ information as may be required concerning location, size and height of contaminant outlets, processes employed, fuels used, and the nature and time periods or duration of emissions and any other matter relevant to air pollution ~~which that~~ is available or reasonably capable of being assembled."

Section 10. Section 75-2-202, MCA, is amended to read:

"75-2-202. ~~Board~~Department to set ambient air quality standards. (1) The ~~board~~department shall establish ambient air quality standards for the state.

(2) Ambient air quality standards for fluorides ~~shall~~must be established through limitations upon the concentration of fluorides in forage grasses, hay, and silage."

Section 11. Section 75-2-203, MCA, is amended to read:

"75-2-203. ~~Board~~Department to set emission levels. (1) The ~~board~~department may establish the limitations of the levels, concentrations, or quantities of emissions of various pollutants from any source necessary to prevent, abate, or control air pollution. Except as otherwise provided in or pursuant to this section, ~~such those~~ levels, concentrations, or quantities ~~shall be~~are controlling, and no emission in excess ~~there of~~shall be of those levels is lawful.

(2) In any area where the concentration of air pollution sources or of population or where the nature of the economy or of land and its uses ~~so may~~ require, the ~~board~~department may fix more stringent requirements

governing the emission of air pollutants than those in effect pursuant to subsection (1) ~~of this section~~.

(3) The ~~board~~department may by rule use any widely recognized measuring system for measuring emission of air contaminants.

(4) Should federal minimum standards of air pollution be set by federal law, the ~~board~~department may, if necessary in some localities of this state, set more stringent standards by rule."

Section 12. Section 75-2-204, MCA, is amended to read:

"75-2-204. Rules relating to construction, installation, alteration, operation, or use. The ~~board~~department may by rule prohibit the construction, installation, alteration, operation, or use of a machine, equipment, device, or facility that it finds may directly or indirectly cause or contribute to air pollution or that is intended primarily to prevent or control the emission of air pollutants, unless the owner or operator ~~has obtained~~obtains a permit under this part or has registered the source of air contaminants with the department if the source is in a category for which only registration is required by the rules adopted to implement this part."

Section 13. Section 75-2-206, MCA, is amended to read:

"75-2-206. Study of effects of sulfur dioxide on health and environment. (1) To the extent that funds are available, the ~~board~~department shall conduct an ongoing study in areas of Montana where there are major industrial sources of sulfur dioxide. The study must ~~shall~~ concentrate on the effects on human health and the environment of ambient sulfur dioxide concentrations separately and in conjunction with particulates.

(2) Notwithstanding other funding sources to pay for the study, the ~~board~~department may accept funds and grants from private and public sources."

Section 14. Section 75-2-207, MCA, is amended to read:

"75-2-207. State regulations no more stringent than federal regulations or guidelines -- exceptions -- procedure. (1) After April 14, 1995, except as provided in subsections (2) and (3) or unless required by state law, the ~~board or~~ department may not adopt a rule to implement this chapter that is more stringent than the comparable federal regulations or guidelines that address the same circumstances. The ~~board or~~ department may incorporate by reference comparable federal regulations or guidelines.

(2) (a) The ~~board or~~ department may adopt a rule to implement this chapter that is more stringent than comparable federal regulations or guidelines only if:

(i) a public hearing is held;

(ii) public comment is allowed; and

(iii) the ~~board or the~~ department makes a written finding after the public hearing and comment period that is based on evidence in the record that the proposed standard or requirement:

(A) protects public health or the environment;

(B) can mitigate harm to the public health or the environment; and

(C) is achievable with current technology.

(b) The written finding required under subsection (2)(a)(iii) must reference information and peer-reviewed scientific studies contained in the record that form the basis for the ~~board's or~~ the department's conclusion. The written finding must also include information from the hearing record regarding costs to the regulated community that are directly attributable to the proposed standard or requirement.

(c) (i) A person or entity affected by a rule of the ~~board or~~ department adopted after January 1, 1990, and before April 14, 1995, that the person or entity believes is more stringent than comparable federal regulations or guidelines may petition the ~~board or~~ department to review the rule.

(ii) If the ~~board or~~ department determines that the rule is more stringent than comparable federal regulations or guidelines, the ~~board or~~ department shall either revise the rule to conform to the federal regulations or guidelines or follow the process provided in subsections (2)(a) and (2)(b) within a reasonable period of time, not to exceed 6 months after receiving the petition.

(iii) A petition under this section does not relieve the petitioner of the duty to comply with the challenged rule. The ~~board or~~ department may charge a petition filing fee in an amount not to exceed \$250.

(iv) A person may also petition the ~~board or~~ department for a rule review under subsection (2)(a) if the ~~board or~~ department adopts a rule after January 1, 1990, in an area in which no federal regulations or guidelines existed and the federal government subsequently establishes comparable regulations or guidelines that are less stringent than the previously adopted ~~board or~~ department rule.

(3) This section does not apply to a rule adopted under the emergency rulemaking provisions of 2-4-303(1)."

Section 15. Section 75-2-211, MCA, is amended to read:

"75-2-211. Permits for construction, installation, alteration, or use. (1) The ~~board~~department shall by rule provide for the issuance, modification, suspension, revocation, and renewal of a permit issued under this part.

(2) (a) Except as provided in 75-1-208(4)(b), 75-2-234, and subsections (2)(b) and (2)(c) of this section, not later than 180 days before construction, installation, or alteration begins or as a condition of use of any machine, equipment, device, or facility that the ~~board~~department finds may directly or indirectly cause or contribute to air pollution or that is intended primarily to prevent or control the emission of air pollutants, the owner or operator shall file with the department the appropriate permit application on forms available from the department.

(b) Except as provided in subsection (2)(e), the owner or operator of an oil or gas well facility shall file the permit application with the department no later than January 3, 2006, or 60 days after the initial well completion date, whichever is later. For purposes of this section, the initial well completion date for an oil or gas well facility is:

(i) for an oil or gas well facility producing oil, the date when the first oil is produced through wellhead equipment into lease tanks from the ultimate producing interval after casing has been run; and

(ii) for an oil or gas well facility producing gas, the date when the oil or gas well facility is capable of producing gas through wellhead equipment from the ultimate producing interval after casing has been run.

(c) An owner or operator who complies with subsection (2)(b) may construct, install, or use equipment necessary to complete or operate an oil or gas well facility without a permit until the department's decision on the application is final. If the owner or operator does not comply with subsection (2)(b), the owner or operator may not operate the oil or gas well facility and is liable for a violation of this section for every day of construction, installation, or operation of the facility.

(d) The ~~board~~department shall adopt rules establishing air emission control requirements applicable to an oil or gas well facility during the time from the initial well completion date until the department's decision on the application is final.

(e) The provisions of subsections (2)(b) and (2)(c) do not apply to an oil or gas well facility subject to

the federal air permitting provisions of 42 U.S.C. 7475 or 7503.

(3) The permit program administered by the department pursuant to this section must include the following:

- (a) requirements and procedures for permit applications, including standard application forms;
- (b) requirements and procedures for submittal of information necessary to determine the location, quantity, and type of emissions;
- (c) procedures for public notice and opportunity for comment or public hearing, as appropriate;
- (d) procedures for providing notice and an opportunity for comment to contiguous states and federal agencies, as appropriate;
- (e) requirements for inspection, monitoring, recordkeeping, and reporting;
- (f) procedures for the transfer of permits;
- (g) requirements and procedures for suspension, modification, and revocation of permits by the department;
- (h) requirements and procedures for appropriate emission limitations and other requirements, including enforceable measures necessary to ensure compliance with those limitations and requirements;
- (i) requirements and procedures for permit modification and amendment; and
- (j) requirements and procedures for issuing a single permit authorizing emissions from similar operations at multiple temporary locations, which permit may include conditions necessary to ensure compliance with the requirements of this chapter at all authorized locations and a requirement that the owner or operator notify the department in advance of each change in location.

(4) This section does not restrict the ~~board's~~ department's authority to adopt regulations providing for a single air quality permit system.

(5) Department approval of an application to transfer a portable emission source from one location to another is exempt from the provisions of 75-1-201(1).

(6) The department may, for good cause shown, waive or shorten the time required for filing the appropriate applications.

(7) The department shall require that applications for permits be accompanied by any plans, specifications, and other information that it considers necessary.

(8) An application is not considered filed until the applicant has submitted all fees required under 75-2-220 and all information and completed application forms required pursuant to subsections (2), (3), and (7) of this section. If the department fails to notify the applicant in writing within 30 days after the purported filing of an application that the application is incomplete and fails to list the reasons why the application is considered incomplete, the application is considered filed as of the date of the purported filing.

(9) (a) Except as provided in 75-1-205(4) and 75-1-208(4)(b), if an application for a permit requires the preparation of an environmental impact statement under the Montana Environmental Policy Act, Title 75, chapter 1, parts 1 through 3, the department shall notify the applicant in writing of the approval or denial of the application:

(i) within 180 days after the department's receipt of a filed application, as provided in subsection (8), if the department prepares the environmental impact statement;

(ii) within 30 days after issuance of the final environmental impact statement by the lead agency if a state agency other than the department has been designated by the governor as lead agency for preparation of the environmental impact statement; or

(iii) if the application is for a machine, equipment, a device, or a facility at an operation that requires a permit under Title 82, chapter 4, part 1, 2, or 3, within 30 days of issuance of the final environmental impact statement in accordance with time requirements of Title 82, chapter 4, part 1, 2, or 3.

(b) If an application does not require the preparation of an environmental impact statement, is not subject to the provisions of 75-2-215, and is not subject to the federal air quality permitting provisions of 42 U.S.C. 7475, 7503, or 7661a, the department shall notify the applicant in writing within 60 days after its receipt of a filed application, as provided in subsection (8), of its approval or denial of the application, except as provided in subsection (14).

(c) If an application does not require the preparation of an environmental impact statement and is subject to the federal air permitting provisions of 42 U.S.C. 7475, 7503, or 7661a, the department shall notify the applicant, in writing, within 75 days after its receipt of a filed application, as provided in subsection (8), of its approval or denial of the application.

(d) Except as provided in subsection (9)(e), if an application does not require the preparation of an environmental impact statement and is subject to the provisions of 75-2-215, the department shall notify the

applicant of its approval or denial of the application, in writing, within 75 days after its receipt of a filed application, as provided in subsection (8).

(e) If an application for a permit is for the construction, installation, alteration, or use of a source that is also required to obtain a license pursuant to 75-10-221 or a permit pursuant to 75-10-406, the department shall prepare a single environmental review document pursuant to Title 75, chapter 1, for the permit required under this section and the license or permit required under 75-10-221 or 75-10-406 and act on the applications within the time period provided for in 75-2-215(3)(e).

(f) The time for notification may be extended for 30 days by written agreement of the department and the applicant. Additional 30-day extensions may be granted by the department upon the request of the applicant. Notification of approval or denial may be served personally or by certified mail on the applicant or the applicant's agent.

(g) Failure by the department to act in a timely manner does not constitute approval or denial of the application. This does not limit or abridge the right of any person to seek available judicial remedies to require the department to act in a timely manner.

(10) Except as provided in 75-2-213, when the department approves or denies the application for a permit under this section, a person who is directly and adversely affected by the department's decision may request a hearing before the ~~board~~ board. The request for hearing must be filed within 15 days after the department renders its decision. An affidavit setting forth the grounds for the request must be filed within 30 days after the department renders its decision. The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing before the ~~board~~ board under this subsection.

(11) Except as provided in 75-2-213:

(a) the department's decision on the application is not final until 15 days have elapsed from the date of the decision;

(b) the filing of a request for hearing does not stay the department's decision. However, the ~~board~~ board may order a stay upon receipt of a petition and a finding, after notice and opportunity for hearing, that:

(i) the person requesting the stay is entitled to the relief demanded in the request for a hearing; or
(ii) continuation of the permit during the appeal would produce great or irreparable injury to the person requesting the stay.

(c) upon granting a stay, the ~~board~~board may require a written undertaking to be given by the party requesting the stay for the payment of costs and damages incurred by the permit applicant and its employees if the ~~board~~board determines that the permit was properly issued. When requiring an undertaking, the ~~board~~board shall use the same procedures and limitations as are provided in 27-19-306(2) through (4) for undertakings on injunctions.

(12) The ~~board~~department shall provide, by rule, a period of 30 days in which the public may submit comments on draft air quality permits for applications that:

- (a) are subject to the federal air quality permitting provisions of 42 U.S.C. 7475, 7503, or 7661a;
- (b) are subject to the requirements of 75-2-215; or
- (c) require the preparation of an environmental impact statement.

(13) The ~~board~~department shall provide, by rule, a period of 15 days in which the public may submit comments on draft air quality permits not subject to subsection (12).

(14) The ~~board~~department shall provide, by rule, the basis upon which the department may extend by 15 days:

- (a) the period as provided in subsection (13) in which the public may submit comments on draft air quality permits not subject to subsection (12); and
- (b) the period for notifying an applicant of its final decision on approval or denial of an application, as provided in subsection (9)(b).

(15) (a) The ~~board~~department may adopt rules for issuance, modification, suspension, revocation, renewal, or creation of:

- (i) general permits covering multiple similar sources; or
 - (ii) other permits covering multiple similar sources.
- (b) Rules adopted pursuant to subsection (15)(a) may provide for construction and operation under the permit upon authorization by the department or upon notice to the department."

Section 16. Section 75-2-212, MCA, is amended to read:

"75-2-212. Variances -- renewals -- filing fees. (1) A person who owns or is in control of a plant, building, structure, process, or equipment may apply to the ~~board~~department for an exemption or partial

exemption from rules governing the quality, nature, duration, or extent of emissions of air pollutants. The application must be accompanied by information and data that the ~~board~~ department may require. The ~~board~~ department may grant an exemption or partial exemption if it finds that:

(a) the emissions occurring or proposed to occur do not constitute a danger to public health or safety; and

(b) compliance with the rules from which an exemption is sought would produce hardship without equal or greater benefits to the public.

(2) An exemption or partial exemption may not be granted pursuant to this section except after public hearing on due notice and until the ~~board~~ department has considered the relative interests of the applicant, other owners or property likely to be affected by the emissions, and the general public.

(3) The exemption or partial exemption may be renewed if a complaint is not made to the ~~board~~ department because of it or if, after the complaint has been made and duly considered at a public hearing held by the ~~board~~ department on due notice, the ~~board~~ department finds that renewal is justified. A renewal may not be granted except on application. An application must be made at least 60 days before the expiration of the exemption or partial exemption. Immediately before application for renewal, the applicant shall give public notice of the application in accordance with rules of the ~~board~~ department. A renewal pursuant to this subsection must be on the same grounds and subject to the same limitations and requirements as provided in subsection (1).

(4) An exemption, partial exemption, or renewal is not a right of the applicant or holder but may be granted at the discretion of the ~~board~~ department. However, a person adversely affected by an exemption, partial exemption, or renewal granted by the ~~board~~ department may obtain judicial review as provided by 75-2-411.

(5) This section and an exemption, partial exemption, or renewal granted pursuant to this section may not be construed to prevent or limit the application of the emergency provisions and procedures of 75-2-402 to a person or the person's property.

(6) A person who owns or is in control of a plant, building, structure, process, or equipment, which are called facilities, who applies to the ~~board~~ department for an exemption or partial exemption or a renewal of an exemption or partial exemption from a rule governing the quality, nature, duration, or extent of emissions of air

pollutants shall submit with the application for variance a sum of not less than \$500 or 2% of the cost of the equipment to bring the facility into compliance with the rule for which a variance is sought, whichever is greater, but not to exceed \$80,000. The department shall prepare a statement of actual costs, and funds in excess of this must be returned to the applicant. The person requesting the variance shall describe the facility in sufficient detail, with accompanying estimates of cost and verifying materials, to permit the department to determine with reasonable accuracy the sum of the fee. For a renewal of an exemption or partial exemption, if a public hearing, environmental impact statement, or appreciable investigation by the department is not necessary, the minimum filing fee applies or the fee may be waived by the department. The filing fee must be deposited in the state special revenue fund provided for in 17-2-102. It is the intent of the legislature that the revenue derived from the filing fees must be used by the department to:

- (a) compile the information required for rendering a decision on the request;
- (b) compile the information necessary for any environmental impact statements;
- (c) offset the costs of a public hearing, printing, or mailing; and
- (d) carry out its other responsibilities under this chapter."

Section 17. Section 75-2-215, MCA, is amended to read:

"75-2-215. Solid or hazardous waste incineration -- additional permit requirements. (1) Until the department ~~has issued~~ issues an air quality permit pursuant to 75-2-211 that includes the conditions required by this section, a person may not construct, install, alter, or use a solid or hazardous waste incinerator or a boiler or industrial furnace subject to the provisions of 75-10-406, except as provided in subsection (2).

(2) An existing or permitted solid or hazardous waste incinerator or a boiler or industrial furnace subject to the provisions of 75-10-406 is subject to the provisions of subsection (1) only if it incinerates or uses as fuel or would incinerate or use as fuel solid or hazardous waste in an amount, form, kind, or content that changes the nature, character, or composition of its emissions from its design or permitted operation.

(3) The department may not issue a permit to a facility described in subsection (1) until:

- (a) the owner or operator ~~has provided~~ provides to the department's satisfaction:
 - (i) a characterization of emissions and ambient concentrations of air pollutants, including hazardous air pollutants, from any existing emission source at the facility; and

(ii) an estimate of emissions and ambient concentrations of air pollutants, including hazardous air pollutants, from the incineration of solid or hazardous waste or the use of hazardous waste as fuel for a boiler or industrial furnace, as proposed in the permit application or modification;

(b) if a license is required pursuant to 75-10-221 or a permit is required pursuant to 75-10-406, the applicant has published, in the county where the project is proposed, at least three notices, in accordance with the procedures identified in 7-1-4127, describing the proposed project;

(c) if a license is required pursuant to 75-10-221 or a permit is required pursuant to 75-10-406, the department has conducted a public hearing on an environmental review prepared pursuant to Title 75, chapter 1, and, as appropriate, provided additional opportunities for the public to review and comment on the permit application or modification;

(d) the department ~~has reached~~ reaches a determination that the projected emissions and ambient concentrations will constitute a negligible risk to the public health, safety, and welfare and to the environment; and

(e) the department ~~has issued~~ issues a license pursuant to 75-10-221 or a permit pursuant to 75-10-406, if a license or permit is required. The decision to issue, deny, or alter a permit pursuant to 75-2-211 and this section must be made within 30 days from when the department issues a license pursuant to 75-10-221 or a permit pursuant to 75-10-406 or within 90 days after the receipt of a complete application for a permit or a permit alteration under 75-2-211 and this section, whichever is later.

(4) The department shall require the application of air pollution control equipment, engineering, or other operating procedures as necessary to provide reductions of air pollutants, including hazardous air pollutants, equivalent to or more stringent than those achieved through the best available control technology.

(5) The ~~board~~ department may by rule provide for general air quality permits under the provisions of 75-2-211 and this section. The rules must cover numerous similar classes or categories of incinerators and boilers or industrial furnaces.

(6) This section does not relieve an owner or operator of a solid or hazardous waste incinerator or a boiler or industrial furnace that is not included under subsection (1) from the obligation to obtain any permit otherwise required under this chapter or rules implementing this chapter."

Section 18. Section 75-2-217, MCA, is amended to read:

"75-2-217. Operating permit program -- exemptions -- general requirements -- duration. (1) The ~~board-department~~ shall provide by rule for the issuance, expiration, modification, amendment, suspension, revocation, and renewal of operating permits as part of an operating permit program to be administered by the department under this chapter. The ~~board-department~~ shall promulgate rules that are consistent with the operating permit framework and guidelines outlined in Subchapter V of the federal Clean Air Act and implementing regulations.

(2) This section applies to all sources of air pollutants that are subject to the provisions of Subchapter V of the federal Clean Air Act, 42 U.S.C. 7661, et seq.

(3) A person may not violate any requirement of an operating permit issued under 75-2-218 and this section or operate any source required to have a permit under this section without having complied with the requirements of the operating permit program administered by the department pursuant to 75-2-218, 75-2-219, and this section.

(4) The ~~board-department~~ may by rule provide for the exemption of one or more source categories, in whole or in part, from all or part of the requirements of this section if the ~~board-department~~ determines that compliance with the requirements of this section is impracticable, infeasible, or unnecessarily burdensome for the sources. The ~~board-department~~ may premise this determination upon a similar determination by the appropriate federal agency acting pursuant to the federal Clean Air Act, 42 U.S.C. 7401, et seq.

(5) The ~~board-department~~ may by rule provide for general operating permits covering numerous similar sources.

(6) An operating permit issued by the department under 75-2-218 and this section is effective for a period not to exceed 5 years and may be renewed.

(7) The operating permit program administered by the department pursuant to this section must include the following:

- (a) adequate procedures that are streamlined and reasonable for:
 - (i) expeditiously determining when applications are complete;
 - (ii) processing applications; and
 - (iii) expeditiously reviewing permit actions, including application renewals or revisions;

- (b) requirements and procedures for submittal of information necessary to determine the location, quantity, and type of emissions;
- (c) procedures for public notice and opportunity for comment or public hearing, as appropriate;
- (d) procedures for providing notice and an opportunity for comment to contiguous states and federal agencies, as appropriate;
- (e) requirements for inspection, monitoring, recordkeeping, compliance certification, and reporting;
- (f) deadlines for submitting permit applications and compliance plans that are not later than 12 months after the source becomes subject to the operating permit requirement;
- (g) deadlines for submitting permit renewal applications that are not later than 6 months before expiration of the existing operating permit;
- (h) requirements for compliance plans that must be submitted with permit and renewal applications, including schedules of compliance and progress reports;
- (i) requirements and procedures for periodic certification of source compliance with permit requirements, including the prompt reporting of any deviations from permit requirements;
- (j) requirements for submission of any plans, specifications, or other information that the department considers necessary under this section;
- (k) conditions and procedures for the transfer of operating permits;
- (l) requirements and procedures for suspension, modification, amendment, and revocation of permits by the department for cause, including the modification or amendment of permits before renewal or termination to incorporate applicable limitations or requirements effective after permit issuance;
- (m) requirements and procedures for incorporating into permits and permit renewals all applicable emission limitations and other requirements, including enforceable measures necessary to ensure compliance with those limitations and requirements;
- (n) requirements and procedures for permit modification and amendment;
- (o) procedures for tracking activities conducted under general permits;
- (p) requirements and procedures for issuing a single operating permit authorizing emissions from similar operations at multiple temporary locations, which permit may include conditions necessary to ensure compliance with the requirements of this chapter at all authorized locations and a requirement that the owner or

operator notify the department in advance of each change in location;

(q) requirements and procedures for allowing changes within a permitted facility without requiring a permit amendment if the changes are not prohibited under this chapter and do not exceed the emissions allowable under the permit; and

(r) other requirements necessary for the department to obtain the authorization to administer an operating permit program under the provisions of Subchapter V of the federal Clean Air Act."

Section 19. Section 75-2-218, MCA, is amended to read:

"75-2-218. Permits for operation -- application completeness -- action by department -- application shield -- review by ~~board~~ board. (1) An application for an operating permit or renewal is not considered filed until the department has determined that it is complete. An application is complete if all fees required under 75-2-220 and all information and completed application forms required under 75-2-217 have been submitted. A complete application must contain all ~~of~~ the information required for the department to begin processing the application. If the department fails to notify the applicant in writing within 60 days after submittal of an application that the application is incomplete and fails to list the reasons why the application is considered incomplete, the application is considered filed on the date of the department's receipt of the application. The department may request additional information after a completeness determination has been made. The ~~board~~ department shall adopt rules that contain criteria for use in determining both when an application is complete and when additional information is required after a completeness determination has been made.

(2) Except as provided in 75-1-208(4)(b) and subsection (3) of this section, the department shall, consistent with the procedures established under 75-2-217, approve or disapprove a complete application for an operating permit or renewal and shall issue or deny the permit or renewal within 18 months after the date of filing. Failure of the department to act in a timely manner does not constitute approval or denial of the application. This does not limit or abridge the right of any person to seek available judicial remedies to require the department to act in a timely manner.

(3) The ~~board~~ department may by rule provide for a transition schedule for both the submittal to the department of initial applications for operating permits by existing sources and action by the department on these initial permit applications. The ~~board~~ department may require that one-third of all operating permit

applications required for existing sources be submitted within the first calendar year after the adoption of rules implementing an operating permit program under 75-2-217.

(4) If an applicant submits a timely and complete application for an operating permit, the applicant's failure to hold a valid operating permit is not a violation of 75-2-217. If an applicant submits a timely and complete application for an operating permit renewal, the expiration of the applicant's existing operating permit is not a violation of 75-2-217. The applicant shall continue to be subject to the terms and conditions of the expired operating permit until the operating permit is renewed and is subject to the application of 75-2-217. The applicant is not entitled to the protection of this subsection if the delay in final action by the department on the application results from the applicant's failure to submit in a timely manner information requested by the department to process the application.

(5) Except as provided in subsection (8), if the department approves or denies an application for an operating permit or the renewal, modification, or amendment of a permit under 75-2-217 and this section, any person that participated in the public comment process required under 75-2-217(7) may request a hearing before the ~~board~~ board. The request for a hearing must be filed within 30 days after the department renders its decision and must include an affidavit setting forth the grounds for the request. The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing ~~before the board~~ under this subsection.

(6) (a) Except as provided in subsection (8), the department's decision on any application is not final until 30 days have elapsed from the date of the decision.

(b) Except as provided in subsection (8), the filing of a request for hearing does not stay the department's decision. However, the ~~board~~ board may order a stay upon receipt of a petition and a finding, after notice and opportunity for an informal hearing, that:

(i) the person requesting the hearing is entitled to the relief demanded in the request for a hearing; or
(ii) continuation of the permit during the appeal would produce great or irreparable injury to the person requesting the hearing.

(c) Upon granting a stay, the ~~board~~ board may require a written undertaking to be given by the party requesting the stay for the payment of costs and damages incurred by the permit applicant and its employees if the ~~board~~ board determines that the permit was properly issued. When requiring an undertaking, the ~~board~~

board shall use the same procedures and limitations as are provided in 27-19-306(2) through (4) for undertakings on injunctions.

(7) The requirements of subsections (5) and (6) also apply to any action initiated by the department to suspend, revoke, modify, or amend an operating permit issued under this section.

(8) The denial by the department of an application under 75-2-217 and this section is not subject to review by the ~~board~~ board or judicial review if the basis for denial is the written objection of the appropriate federal agency acting pursuant to the federal Clean Air Act, 42 U.S.C. 7401, et seq.

(9) Compliance with an operating permit granted or renewed under 75-2-217 and this section is considered to be compliance with the requirements of this chapter only if the permit expressly includes those requirements or an express determination that those requirements are not applicable. This subsection does not apply to general permits provided for under 75-2-217."

Section 20. Section 75-2-219, MCA, is amended to read:

"75-2-219. Permits for operation -- limitations. Sections 75-2-217 and 75-2-218 may not be construed to:

(1) affect the department's issuance of a permit for the construction, installation, alteration, or use of a source of air pollutants pursuant to 75-2-211 or 75-2-215;

(2) restrict the ~~board's~~ department's authority to adopt regulations providing for a single air quality permit system; or

(3) affect permits, allowances, phase II compliance schedules, or other acid rain provisions under Subchapter IV of the federal Clean Air Act, 42 U.S.C. 7651, et seq."

Section 21. Section 75-2-220, MCA, is amended to read:

"75-2-220. Fees -- special assessments -- late payment assessments -- credit. (1) A person required to obtain a permit or to register a facility pursuant to this chapter shall submit to the department fees set ~~by the board~~ pursuant to ~~75-2-111~~ 75-2-112 that are sufficient to cover the reasonable costs, direct and indirect, of developing and administering the permitting or registration requirements in this chapter, including:

(a) reviewing and acting upon a permit application or a registration or modifying, amending, or

updating a permit or registration;

(b) implementing and enforcing the terms and conditions of a permit issued pursuant to this chapter or an administrative rule or other regulatory requirement adopted pursuant to this chapter. This does not include any court costs or other costs associated with an enforcement action. If the permit is not issued, the department shall return this portion of the fee to the applicant.

(c) emissions and ambient monitoring;

(d) preparing generally applicable rules or guidance;

(e) modeling, analysis, and demonstrations;

(f) preparing inventories and tracking emissions;

(g) providing support to sources under the small business stationary source technical and environmental compliance assistance program; and

(h) all other costs required to be recovered pursuant to Subchapter V of the federal Clean Air Act, 42 U.S.C. 7661, et seq.

(2) For a permit or registration fee based on emissions, the fee must be based on emissions of air pollutants regulated under this chapter, including but not limited to volatile organic compounds, each air pollutant regulated under section 7411 or 7412 of the federal Clean Air Act, 42 U.S.C. 7401, et seq., and each air pollutant subject to a national primary ambient air quality standard.

(3) The ~~board~~department shall by rule provide for the annual review of all fees assessed for persons holding an operating permit issued under 75-2-217 and 75-2-218 to ensure the collection of revenue sufficient to cover the costs of administering the operating permit requirements of this chapter, as required by Subchapter V of the federal Clean Air Act.

(4) In addition to the fees required under subsection (1), the ~~board~~department may order the assessment of additional fees required to fund specific activities of the department that are directed at a particular geographic area if the legislature authorizes the activities and appropriates funds for the activities, including emissions or ambient monitoring, modeling analysis or demonstrations, and emissions inventories or tracking. Additional assessments may be levied only on those sources that are within or are believed by the department to be impacting the geographic area. Before the ~~board~~department may require the fees, it shall first determine, after opportunity for hearing, that the activities to be funded are necessary for the administration or

implementation of this chapter, that the amount of the requested fees is appropriate, that the assessments apportion the required funding in an equitable manner, and that the department has obtained the necessary appropriation. The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing before the ~~board~~department under this subsection.

(5) (a) If the permitholder or registrant fails to pay in a timely manner a fee required under subsection (1), in addition to the fee, the department may:

(i) impose a penalty not to exceed 50% of the fee, plus interest on the required fee computed as provided in 15-1-216; or

(ii) revoke the permit or registration consistent with those procedures established under this chapter for permit revocation.

(b) Within 1 year of revocation, the department may reissue the revoked permit or registration after the permitholder or registrant has paid all outstanding fees required under subsections (1) and (4), including all penalties and interest provided for under this subsection (5). In reissuing the revoked permit, the department may modify the terms and conditions of the permit as necessary to account for changes in air quality occurring since revocation.

(c) The ~~board~~department shall by rule provide for the implementation of this subsection (5), including criteria for imposition of the sanctions described in this subsection (5).

(6) The ~~board~~department may by rule allow the reduction of a fee required under this section for an operating permit or permit renewal to account for the financial resources of a category of small business stationary sources.

(7) As a condition of the continuing validity of a permit issued by the department under this chapter prior to October 1, 1993, the ~~board~~department may by rule require the permitholder to pay the fees under subsections (1) and (4).

(8) For an existing source of air pollutants that is subject to Subchapter V of the federal Clean Air Act and that is not required to hold an air quality permit from the department as of October 1, 1993, the ~~board~~department may, as a condition of continued operation, require by rule that the owner or operator of the source pay the fees under subsections (1) and (4).

(9) (a) The department shall give written notice of the fee to be assessed and the basis for the

department's fee assessment under this section to the owner or operator of the air pollutant source. The owner or operator may appeal the department's fee assessment ~~to the board~~ to the board within 20 days after receipt of the written notice.

(b) An appeal must be based upon the allegation that the fee assessment is erroneous or excessive. An appeal may not be based on the amount of the fee contained in the schedule adopted by the ~~board~~ department.

(c) If any part of the fee assessment is not appealed, it must be paid to the department upon receipt of the notice required in subsection (9)(a).

(d) The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing before the ~~board~~ board under this subsection (9).

(10) The total of the fees charged to an applicant under subsections (1) and (4) of this section must be reduced by the amount of any credit accruing to the applicant under 75-2-225. The department may not increase fee assessments beyond legislative appropriation levels to adjust for any credit claimed under 75-2-225. The credit applied under 75-2-225 may not limit the department's ability to collect fees sufficient to cover the reasonable costs, both direct and indirect, of developing and administering the permitting and registration requirements of this chapter."

Section 22. Section 75-2-221, MCA, is amended to read:

"75-2-221. Deposit of air quality permitting and registration fees. (1) All money collected by the department pursuant to ~~75-2-111~~ 75-2-112 and 75-2-220 must be deposited in an account in the state special revenue fund to be appropriated by the legislature to the department for the development and administration of the permitting and registration requirements of this chapter.

(2) Upon request, the expenditure by the department of funds in this account may be audited by a qualified auditor at the end of each fiscal year. The cost of the audit must be paid by the person requesting the audit."

Section 23. Section 75-2-231, MCA, is amended to read:

"75-2-231. Medical waste and hazardous waste incineration -- additional permit requirements.

(1) Because of the potential emission of chlorinated dioxins, furans, heavy metals, and carcinogens as a result of the incineration of medical waste and hazardous waste and the potential health risk these chemicals pose, the ~~board~~ department shall adopt rules establishing additional permit requirements for commercial medical waste and commercial hazardous waste incinerators. For the purposes of this section, the term "commercial medical waste incinerator" does not include hospital or medical facility incinerators that primarily incinerate medical waste generated onsite. The ~~board~~ department shall adopt rules that:

(a) regulate the type and amount of plastic and other materials in the medical waste stream and hazardous waste stream that may be a source of chlorine, in order to minimize the potential emission of chlorinated dioxins, furans, and carcinogens;

(b) require commercial medical waste and commercial hazardous waste incinerators to achieve the lowest achievable emission rate to prevent the public health risk from air emissions or ambient concentrations from exceeding the negligible risk standard required by 75-2-215 and any applicable federal allowable intake standards, as determined pursuant to subsection (3), for dioxins, furans, heavy metals, and other hazardous air pollutants;

(c) implement the requirements of subsection (2), including establishing procedures and standards for the collection of high-quality scientific information and for the submission of the information by the applicant;

(d) establish procedures for the monitoring, testing, and inspection of:

(i) the medical waste stream and hazardous waste stream, including heavy metals and possible precursors to the formation of chlorinated dioxins, furans, and carcinogens;

(ii) combustion, including destruction and removal efficiencies; and

(iii) emissions, including continuous emission monitoring and air pollution control devices; and

(e) are necessary to implement the provisions of this section and to coordinate the requirements under this section with the requirements contained in 75-2-211 and 75-2-215.

(2) A person who applies for an air quality permit or alteration pursuant to 75-2-211 and 75-2-215 for a commercial medical waste incinerator or commercial hazardous waste incinerator shall provide, to the satisfaction of the department, the following information:

(a) a dispersion model of emissions, using approved methods, and those studies that are necessary to identify the potential community exposure;

(b) an analysis of the potential pathways for human exposure to air contaminants, particularly chlorinated dioxins, furans, heavy metals, and other carcinogens, including the potential for inhalation, ingestion, and physical contact by the affected communities; and

(c) a quantitative analysis of the estimated total possible human exposure to chlorinated dioxins, furans, heavy metals, and carcinogens for the affected communities.

(3) The department may not issue or alter an air quality permit pursuant to this chapter until the department has determined, based upon an analysis of the information provided by the applicant pursuant to subsection (2) and other necessary and relevant data, that the public health risk from air emissions or ambient concentrations of chlorinated dioxins, furans, heavy metals, and other hazardous air pollutants will not exceed the negligible risk standard required by 75-2-215 and any applicable federal standards for allowable intake, as determined by the department after a review of established and relevant federal standards and guidelines.

(4) This section may not be construed in any way to:

(a) require the ~~board~~ department to promulgate standards for the allowable intake of any substances for which the federal government has not established standards;

(b) allow the ~~board~~ department to promulgate standards for the allowable intake of any substances for which the federal government has established standards that are more stringent than the federal standards; or

(c) limit or otherwise impair the duty of the department under 75-2-215 to determine that emissions and ambient concentrations will constitute a negligible risk as required by 75-2-215(3)(d), including emissions and ambient concentrations of dioxins, furans, heavy metals, and carcinogens, before issuing an air quality permit pursuant to 75-2-211 and 75-2-215."

Section 24. Section 75-2-234, MCA, is amended to read:

"75-2-234. Registration. The ~~board~~ department may adopt rules for the registration of certain classes of sources of air contaminants in lieu of a permit application required under 75-2-211(2)."

Section 25. Section 75-2-301, MCA, is amended to read:

"75-2-301. Local air pollution control programs -- consistency with state and federal regulations -- procedure for public notice and comment required. (1) After public hearing, a municipality or

county may establish and administer a local air pollution control program if the program is consistent with this chapter and is approved by the ~~board~~ department.

(2) If a local air pollution control program established by a county encompasses all or part of a municipality, the county and each municipality shall approve the program in accordance with subsection (1).

(3) (a) Except as provided in subsection (5), the ~~board~~ department by order may approve a local air pollution control program that:

(i) subject to subsection (4), provides by rule, ordinance, or local law for requirements compatible with, more stringent than, or more extensive than those imposed by 75-2-203, 75-2-204, 75-2-211, 75-2-212, 75-2-215, 75-2-217 through 75-2-219, and 75-2-402 and rules adopted under these sections;

(ii) provides for the enforcement of requirements established under subsection (3)(a)(i) by appropriate administrative and judicial processes; and

(iii) provides for administrative organization, staff, financial resources, and other resources necessary to effectively and efficiently carry out the program. As part of meeting these requirements, a local air pollution control program may administer the permit or registration fee provisions of 75-2-220. The permit or registration fees collected by a local air pollution control program must be deposited in a county special revenue fund to be used by the local air pollution control program for administration of local air pollution control program permitting or registration activities.

(b) ~~Board~~ Department approval of a rule, ordinance, or local law that is more stringent than the comparable state law is subject to the provisions of subsection (4).

(4) (a) A local air pollution control program may, subject to approval by the ~~board~~ department, adopt a rule, ordinance, or local law to implement this chapter that is more stringent than comparable state or federal regulations or guidelines only if:

(i) a public hearing is held;

(ii) public comment is allowed; and

(iii) the ~~board~~ department or the local air pollution control program makes a written finding after the public hearing and comment period that is based on evidence in the record that the proposed local standard or requirement:

(A) protects public health or the environment of the area;

- (B) can mitigate harm to the public health or the environment; and
- (C) is achievable with current technology.

(b) The written finding required under subsection (4)(a)(iii) must reference information and peer-reviewed scientific studies contained in the record that form the basis for the ~~board's~~ department's or the local air pollution control program's conclusion. The written finding must also include information from the hearing record regarding costs to the regulated community that are directly attributable to the proposed local standard or requirement.

(c) (i) A person or entity affected by a rule, ordinance, or local law approved or adopted after January 1, 1996, and before May 1, 2001, that the person or entity believes is more stringent than comparable state or federal regulations or guidelines may petition the ~~board~~ department or the local air pollution control program to review the rule, ordinance, or local law.

(ii) If the ~~board~~ department or local air pollution control program determines that the rule, ordinance, or local law is more stringent than state or federal regulations or guidelines, the ~~board~~ department or local air pollution control program shall either revise the rule, ordinance, or local law to conform to the state or federal regulations or guidelines or follow the process provided in subsections (4)(a) and (4)(b) within a reasonable period of time, not to exceed 6 months after receiving the petition.

(5) Except for those emergency powers provided for in 75-2-402, the ~~board~~ department may not delegate to a local air pollution control program the authority to control any air pollutant source that:

- (a) requires the preparation of an environmental impact statement in accordance with Title 75, chapter 1, part 2;
- (b) is subject to regulation under the Montana Major Facility Siting Act, as provided in Title 75, chapter 20; or
- (c) has the potential to emit 250 tons a year or more of any pollutant subject to regulation under this chapter, including fugitive emissions, unless the authority to control the source was delegated to a local air pollution control program prior to January 1, 1991.

(6) If the ~~board~~ department finds that the location, character, or extent of particular concentrations of population, air pollutant sources, or geographic, topographic, or meteorological considerations or any combination of these makes impracticable the maintenance of appropriate levels of air quality without an

areawide air pollution control program, the ~~board~~department may determine the boundaries within which the program is necessary and require it as the only acceptable alternative to direct state administration.

(7) If the ~~board~~department has reason to believe that any part of an air pollution control program in force under this section is either inadequate to prevent and control air pollution in the jurisdiction to which the program relates or is being administered in a manner inconsistent with this chapter, the ~~board~~department shall, on notice, conduct a hearing on the matter.

(8) If, after the hearing, the ~~board~~department determines that any part of the program is inadequate to prevent and control air pollution in the jurisdiction to which it relates or that it is not accomplishing the purposes of this chapter, it shall require that necessary corrective measures be taken within a reasonable time, not to exceed 60 days.

(9) If the jurisdiction fails to take these measures within the time required, the department shall administer within that jurisdiction all of the provisions of this chapter, including the terms contained in any applicable ~~board~~department order, that are necessary to correct the deficiencies found by the ~~board~~department. The department's control program supersedes all municipal or county air pollution laws, rules, ordinances, and requirements in the affected jurisdiction. The cost of the department's action is a charge on the jurisdiction.

(10) If the ~~board~~department finds that the control of a particular air pollutant source because of its complexity or magnitude is beyond the reasonable capability of the local jurisdiction or may be more efficiently and economically performed at the state level, it may ~~direct the department to~~ assume and retain control over that air pollutant source. A charge may not be assessed against the jurisdiction. Findings made under this subsection may be either on the basis of the nature of the sources involved or on the basis of their relationship to the size of the communities in which they are located.

(11) A jurisdiction in which the department administers all or part of its air pollution control program under subsection (9) may, ~~with the approval of the board,~~ establish or resume an air pollution control program that meets the requirements of subsection (3).

(12) A municipality or county may administer all or part of its air pollution control program in cooperation with one or more municipalities or counties of this state or of other states.

(13) Local air pollution control programs established under this section shall provide procedures for

public notice, public hearing, public comment, and appeal for any proposed new or revised rules, ordinances, or local laws adopted pursuant to this section. The procedures must comply with the following requirements:

(a) The local air pollution control program shall create and maintain a list of interested persons who wish to be informed of actions related to rules, ordinances, or local laws adopted by the local air pollution control program.

(b) At least 30 days prior to the adoption, revision, or repeal of a rule, ordinance, or law, the local air pollution control program shall give written notice of its intended action.

(c) The notice required under subsection (13)(b) must include:

(i) a statement of the terms or substance of the intended action or a description of the subjects and issues affected by the intended action;

(ii) an explanation of the procedure for a person to be included on the list of interested persons established pursuant to subsection (13)(a);

(iii) an explanation of the procedures and deadlines for presentation of oral or written comments related to the intended action;

(iv) an explanation of the process for requesting a public hearing as provided in subsection (13)(f); and

(v) the rationale for the intended action. The rationale must:

(A) include an explanation of why the intended action is reasonably necessary to implement the goals and purposes of the local air pollution control program;

(B) specifically address those intended actions for which there are no similar state or federal regulations or guidelines; and

(C) be written in plain, easily understood language.

(d) For the purposes of subsection (13)(c)(v), a statement of authority to adopt a rule, ordinance, or local law does not, standing alone, constitute a showing of reasonable necessity for the intended action.

(e) The local air pollution control program shall mail a copy of the proposed rule, ordinance, or local law to all interested persons on the list established pursuant to subsection (13)(a) who have made timely requests to be included on the list.

(f) If at least 10 of the persons who will be directly affected by the proposed rule, ordinance, or local law request a public hearing, the local air pollution control program shall hold a hearing to hear comments from

the public on the intended action.

(g) The local air pollution control program shall prepare a written response to all comments submitted in writing or presented at the public hearing for consideration prior to adoption, revision, or repeal of the proposed rule, ordinance, or local law.

(h) A person who submits a written comment on a proposed action or who attends a public hearing in regard to a proposed action must be informed of the final action."

Section 26. Section 75-2-302, MCA, is amended to read:

"75-2-302. State and federal aid. (1) Any local air pollution control program meeting the requirements of this chapter and rules made pursuant ~~thereto shall be~~ to this chapter is eligible for state aid in an amount up to 30% of the locally funded annual operating cost ~~thereof of the program.~~

(2) Federal aid granted to the state for developing or maintaining a local air pollution control program that is subsequently granted to a local program is not considered state aid.

(3) Subdivisions of the state may make application for, receive, administer, and expend any federal aid for the control of air pollution or the development and administration of programs related to air pollution control, provided the program is currently approved by the ~~board~~ department under 75-2-301."

Section 27. Section 75-2-422, MCA, is amended to read:

"75-2-422. Amount of noncompliance penalty -- late charge. (1) The amount of the penalty ~~which that shall be~~ is assessed and collected with respect to any source under 75-2-421 through 75-2-429 ~~shall must~~ be equal to:

(a) the amount determined in accordance with the rules adopted by the ~~board~~ department, which ~~shall must~~ be no less than the economic value ~~which that~~ a delay in compliance after July 1, 1979, may have for the owner of ~~such the~~ source, including the quarterly equivalent of the capital costs of compliance and debt service over a normal amortization period not to exceed 10 years, operation and maintenance costs foregone as a result of noncompliance, and any additional economic value ~~which such a that the~~ delay may have for the owner or operator of such source; minus

(b) the amount of any expenditure made by the owner or operator of that source during ~~any such the~~

quarter for the purpose of bringing that source into and maintaining compliance with ~~such the~~ requirement, to the extent that ~~such the~~ expenditures have not been taken into account in the calculation of the penalty under subsection (1)(a).

(2) To the extent that any expenditure under subsection (1)(b) made during any quarter is not subtracted for ~~such the~~ quarter from the costs under subsection (1)(a), ~~such the~~ expenditure may be subtracted for any subsequent quarter from ~~such the~~ costs. In no event may the amount paid be less than the quarterly payment minus the amount attributed to actual cost of construction.

(3) If the owner or operator of any stationary source to whom notice is issued under 75-2-425 does not submit a timely petition under 75-2-425(2)(b) or submits a petition ~~which that~~ is denied and if the owner or operator fails to submit a calculation of the penalty assessment, a schedule for payment, and the information necessary for independent verification thereof, the department may enter into a contract with any person who has no financial interest in the matter to assist in determining the amount of the penalty assessment or payment schedule with respect to ~~such the~~ source. The cost of carrying out ~~such the~~ contract may be added to the penalty to be assessed against the owner or operator of ~~such the~~ source.

(4) Any person who fails to pay the amount of any penalty with respect to any source under 75-2-421 through 75-2-429 on a timely basis shall ~~be required to pay~~ in addition a quarterly nonpayment penalty for each quarter during which ~~such the~~ failure to pay persists. ~~Such The~~ nonpayment penalty ~~shall be~~ is equal to 20% of the aggregate amount of ~~such the~~ person's penalties and nonpayment penalties with respect to ~~such the~~ source ~~which that~~ are unpaid as of the beginning of ~~such the~~ quarter."

Section 28. Section 75-2-428, MCA, is amended to read:

"75-2-428. Effect of new standards on noncompliance penalty. In the case of any emission limitation, emission standard, or other requirement approved or adopted by the ~~board~~ department under this chapter after July 1, 1979, and approved by the federal environmental protection agency as an amendment to the state implementation plan, which is more stringent than the emission limitation or requirement for the source in effect prior to such approval or promulgation, if any, or where there was no emission limitation, emission standard, or other requirement approved or adopted before July 1, 1979, the date for imposition of the noncompliance penalty under 75-2-421 through 75-2-429 shall be the date on which the source is required to

be in full compliance with such emission limitation, emission standard, or other requirement or 3 years after the approval or promulgation of such emission limitation or requirement, whichever is sooner."

Section 29. Section 75-5-103, MCA, is amended to read:

"75-5-103. (Temporary) Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

- (1) "Associated supporting infrastructure" means:
 - (a) electric transmission and distribution facilities;
 - (b) pipeline facilities;
 - (c) aboveground ponds and reservoirs and underground storage reservoirs;
 - (d) rail transportation;
 - (e) aqueducts and diversion dams;
 - (f) devices or equipment associated with the delivery of an energy form or product produced at an energy development project; or
 - (g) other supporting infrastructure, as defined by ~~board~~ department rule, that is necessary for an energy development project.
- (2) (a) "Base numeric nutrient standards" means numeric water quality criteria for nutrients in surface water that are adopted to protect the designated uses of a surface water body.
- (b) The term does not include numeric water quality standards for nitrate, nitrate plus nitrite, or nitrite that are adopted to protect human health.
- ~~(3) "Board" means the board of environmental review provided for in 2-15-3502.~~
- (3) "Board" means the board of environmental review provided for in 2-15-3502.
- ~~(4)(4)~~ "Contamination" means impairment of the quality of state waters by sewage, industrial wastes, or other wastes, creating a hazard to human health.
- ~~(5)(5)~~ "Council" means the water pollution control advisory council provided for in 2-15-2107.
- ~~(6)(6)~~ (a) "Currently available data" means data that is readily available to the department at the time a decision is made, including information supporting its previous lists of water bodies that are threatened or impaired.

(b) The term does not mean new data to be obtained as a result of department efforts.

~~(7)~~(7) "Degradation" means a change in water quality that lowers the quality of high-quality waters for a parameter. The term does not include those changes in water quality determined to be nonsignificant pursuant to 75-5-301(5)(c).

~~(8)~~(8) "Department" means the department of environmental quality provided for in 2-15-3501.

~~(9)~~(9) "Disposal system" means a system for disposing of sewage, industrial, or other wastes and includes sewage systems and treatment works.

~~(10)~~(10) "Effluent standard" means a restriction or prohibition on quantities, rates, and concentrations of chemical, physical, biological, and other constituents that are discharged into state waters.

~~(11)~~(11) (a) "Energy development project" means each plant, unit, or other development and associated developments, including any associated supporting infrastructure, designed for or capable of:

- (i) generating electricity;
- (ii) producing gas derived from coal;
- (iii) producing liquid hydrocarbon products;
- (iv) refining crude oil or natural gas;
- (v) producing alcohol to be blended for ethanol-blended gasoline and that are eligible for a tax incentive pursuant to Title 15, chapter 70, part 5;
- (vi) producing biodiesel and that are eligible for a tax incentive for the production of biodiesel pursuant to 15-32-701; or
- (vii) transmitting electricity through an electric transmission line with a design capacity of equal to or greater than 50 kilovolts.

(b) The term does not include a nuclear facility as defined in 75-20-1202.

~~(12)~~(12) "Existing uses" means those uses actually attained in state waters on or after July 1, 1971, whether or not those uses are included in the water quality standards.

~~(13)~~(13) "High-quality waters" means all state waters, except:

(a) ground water classified as of January 1, 1995, within the "III" or "IV" classifications established by the ~~board's~~ department's classification rules; and

(b) surface waters that:

- (i) are not capable of supporting any one of the designated uses for their classification; or
- (ii) have zero flow or surface expression for more than 270 days during most years.

~~(14)~~(14) "Impaired water body" means a water body or stream segment for which sufficient credible data shows that the water body or stream segment is failing to achieve compliance with applicable water quality standards.

~~(15)~~(15) "Industrial waste" means a waste substance from the process of business or industry or from the development of any natural resource, together with any sewage that may be present.

~~(16)~~(16) "Interested person" means a person who has a real property interest, a water right, or an economic interest that is or may be directly and adversely affected by the department's preliminary decision regarding degradation of state waters, pursuant to 75-5-303. The term includes a person who has requested authorization to degrade high-quality waters.

~~(17)~~(17) "Load allocation" means the portion of a receiving water's loading capacity that is allocated to one of its existing or future nonpoint sources or to natural background sources.

~~(18)~~(18) "Loading capacity" means the mass of a pollutant that a water body can assimilate without a violation of water quality standards. For pollutants that cannot be measured in terms of mass, it means the maximum change that can occur from the best practicable condition in a surface water without causing a violation of the surface water quality standards.

~~(19)~~(19) "Local department of health" means the staff, including health officers, employed by a county, city, city-county, or district board of health.

~~(20)~~(20) "Metal parameters" includes but is not limited to aluminum, antimony, arsenic, beryllium, barium, cadmium, chromium, copper, fluoride, iron, lead, manganese, mercury, nickel, selenium, silver, thallium, and zinc.

~~(21)~~(21) "Mixing zone" means an area established in a permit or final decision on nondegradation issued by the department where water quality standards may be exceeded, subject to conditions that are imposed by the department and that are consistent with the rules adopted by the ~~board~~ department.

~~(22)~~(22) "Nutrient standards variance" means numeric water quality criteria for nutrients based on a determination that base numeric nutrient standards cannot be achieved because of economic impacts or because of the limits of technology. The term includes individual, general, and alternative nutrient standards

variances in accordance with 75-5-313.

~~(23)~~(23) "Nutrient work group" means an advisory work group, convened by the department, representing publicly owned and privately owned point sources of pollution, nonpoint sources of pollution, and other interested parties that will advise the department on the base numeric nutrient standards, the development of nutrient standards variances, and the implementation of those standards and variances together with associated economic impacts.

~~(24)~~(24) "Other wastes" means garbage, municipal refuse, decayed wood, sawdust, shavings, bark, lime, sand, ashes, offal, night soil, oil, grease, tar, heat, chemicals, dead animals, sediment, wrecked or discarded equipment, radioactive materials, solid waste, and all other substances that may pollute state waters.

~~(25)~~(25) "Outstanding resource waters" means:

(a) state surface waters located wholly within the boundaries of areas designated as national parks or national wilderness areas as of October 1, 1995; or

(b) other surface waters or ground waters classified by the ~~board~~department under the provisions of 75-5-316 and approved by the legislature.

~~(26)~~(26) "Owner or operator" means a person who owns, leases, operates, controls, or supervises a point source.

~~(27)~~(27) "Parameter" means a physical, biological, or chemical property of state water when a value of that property affects the quality of the state water.

~~(28)~~(28) "Person" means the state, a political subdivision of the state, institution, firm, corporation, partnership, individual, or other entity and includes persons resident in Canada.

~~(29)~~(29) "Point source" means a discernible, confined, and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, or vessel or other floating craft, from which pollutants are or may be discharged.

~~(30)~~(30) (a) "Pollution" means:

(i) contamination or other alteration of the physical, chemical, or biological properties of state waters that exceeds that permitted by Montana water quality standards, including but not limited to standards relating to change in temperature, taste, color, turbidity, or odor; or

(ii) the discharge, seepage, drainage, infiltration, or flow of liquid, gaseous, solid, radioactive, or other

substance into state water that will or is likely to create a nuisance or render the waters harmful, detrimental, or injurious to public health, recreation, safety, or welfare, to livestock, or to wild animals, birds, fish, or other wildlife.

(b) The term does not include:

(i) a discharge, seepage, drainage, infiltration, or flow that is authorized under the pollution discharge permit rules adopted by the ~~board~~ department under this chapter;

(ii) activities conducted under this chapter that comply with the conditions imposed by the department in short-term authorizations pursuant to 75-5-308;

(iii) contamination of ground water within the boundaries of an underground mine using in situ coal gasification and operating in accordance with a permit issued under 82-4-221.

(c) Contamination referred to in subsection ~~(30)(b)(iii) and (30)(b)(iv)~~ (30)(b)(iii) and (30)(b)(iv) does not require a mixing zone.

~~(31)~~(31) "Sewage" means water-carried waste products from residences, public buildings, institutions, or other buildings, including discharge from human beings or animals, together with ground water infiltration and surface water present.

~~(32)~~(32) "Sewage system" means a device for collecting or conducting sewage, industrial wastes, or other wastes to an ultimate disposal point.

~~(33)~~(33) "Standard of performance" means a standard adopted by the ~~board~~ department for the control of the discharge of pollutants that reflects the greatest degree of effluent reduction achievable through application of the best available demonstrated control technology, processes, operating methods, or other alternatives, including, when practicable, a standard permitting no discharge of pollutants.

~~(34)~~(34) (a) "State waters" means a body of water, irrigation system, or drainage system, either surface or underground.

(b) The term does not apply to:

(i) ponds or lagoons used solely for treating, transporting, or impounding pollutants; or

(ii) irrigation waters or land application disposal waters when the waters are used up within the irrigation or land application disposal system and the waters are not returned to state waters.

~~(35)~~(35) "Sufficient credible data" means chemical, physical, or biological monitoring data, alone or in

combination with narrative information, that supports a finding as to whether a water body is achieving compliance with applicable water quality standards.

~~(36)~~(36) "Threatened water body" means a water body or stream segment for which sufficient credible data and calculated increases in loads show that the water body or stream segment is fully supporting its designated uses but threatened for a particular designated use because of:

- (a) proposed sources that are not subject to pollution prevention or control actions required by a discharge permit, the nondegradation provisions, or reasonable land, soil, and water conservation practices; or
- (b) documented adverse pollution trends.

~~(37)~~(37) "Total maximum daily load" or "TMDL" means the sum of the individual waste load allocations for point sources and load allocations for both nonpoint sources and natural background sources established at a level necessary to achieve compliance with applicable surface water quality standards.

~~(38)~~(38) "Treatment works" means works, including sewage lagoons, installed for treating or holding sewage, industrial wastes, or other wastes.

~~(39)~~(39) "Waste load allocation" means the portion of a receiving water's loading capacity that is allocated to one of its existing or future point sources.

~~(40)~~(40) "Water quality protection practices" means those activities, prohibitions, maintenance procedures, or other management practices applied to point and nonpoint sources designed to protect, maintain, and improve the quality of state waters. Water quality protection practices include but are not limited to treatment requirements, standards of performance, effluent standards, and operating procedures and practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from material storage.

~~(41)~~(41) "Water well" means an excavation that is drilled, cored, bored, washed, driven, dug, jetted, or otherwise constructed and intended for the location, diversion, artificial recharge, or acquisition of ground water.

~~(42)~~(42) "Watershed advisory group" means a group of individuals who wish to participate in an advisory capacity in revising and reprioritizing the list of water bodies developed under 75-5-702 and in the development of TMDLs under 75-5-703, including those groups or individuals requested by the department to participate in an advisory capacity as provided in 75-5-704.

75-5-103. (Effective on occurrence of contingency) Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Associated supporting infrastructure" means:

(a) electric transmission and distribution facilities;

(b) pipeline facilities;

(c) aboveground ponds and reservoirs and underground storage reservoirs;

(d) rail transportation;

(e) aqueducts and diversion dams;

(f) devices or equipment associated with the delivery of an energy form or product produced at an energy development project; or

(g) other supporting infrastructure, as defined by ~~board~~ department rule, that is necessary for an energy development project.

(2) (a) "Base numeric nutrient standards" means numeric water quality criteria for nutrients in surface water that are adopted to protect the designated uses of a surface water body.

(b) The term does not include numeric water quality standards for nitrate, nitrate plus nitrite, or nitrite that are adopted to protect human health.

~~(3) "Board" means the board of environmental review provided for in 2-15-3502.~~

(3) "Board" means the board of environmental review provided for in 2-15-3502.

~~(4)~~(4) "Contamination" means impairment of the quality of state waters by sewage, industrial wastes, or other wastes, creating a hazard to human health.

~~(5)~~(5) "Council" means the water pollution control advisory council provided for in 2-15-2107.

~~(6)~~(6) (a) "Currently available data" means data that is readily available to the department at the time a decision is made, including information supporting its previous lists of water bodies that are threatened or impaired.

(b) The term does not mean new data to be obtained as a result of department efforts.

~~(7)~~(7) "Degradation" means a change in water quality that lowers the quality of high-quality waters for a parameter. The term does not include those changes in water quality determined to be nonsignificant pursuant to 75-5-301(5)(c).

~~(8)~~(8) "Department" means the department of environmental quality provided for in 2-15-3501.

~~(9)~~(9) "Disposal system" means a system for disposing of sewage, industrial, or other wastes and

includes sewage systems and treatment works.

~~(10)~~(10) "Effluent standard" means a restriction or prohibition on quantities, rates, and concentrations of chemical, physical, biological, and other constituents that are discharged into state waters.

~~(11)~~(11) (a) "Energy development project" means each plant, unit, or other development and associated developments, including any associated supporting infrastructure, designed for or capable of:

- (i) generating electricity;
- (ii) producing gas derived from coal;
- (iii) producing liquid hydrocarbon products;
- (iv) refining crude oil or natural gas;
- (v) producing alcohol to be blended for ethanol-blended gasoline and that are eligible for a tax incentive pursuant to Title 15, chapter 70, part 5;
- (vi) producing biodiesel and that are eligible for a tax incentive for the production of biodiesel pursuant to 15-32-701; or
- (vii) transmitting electricity through an electric transmission line with a design capacity of equal to or greater than 50 kilovolts.

(b) The term does not include a nuclear facility as defined in 75-20-1202.

~~(12)~~(12) "Existing uses" means those uses actually attained in state waters on or after July 1, 1971, whether or not those uses are included in the water quality standards.

~~(13)~~(13) "High-quality waters" means all state waters, except:

(a) ground water classified as of January 1, 1995, within the "III" or "IV" classifications established by the ~~board's~~ department's classification rules; and

(b) surface waters that:

- (i) are not capable of supporting any one of the designated uses for their classification; or
- (ii) have zero flow or surface expression for more than 270 days during most years.

~~(14)~~(14) "Impaired water body" means a water body or stream segment for which sufficient credible data shows that the water body or stream segment is failing to achieve compliance with applicable water quality standards.

~~(15)~~(15) "Industrial waste" means a waste substance from the process of business or industry or from

the development of any natural resource, together with any sewage that may be present.

~~(16)~~(16) "Interested person" means a person who has a real property interest, a water right, or an economic interest that is or may be directly and adversely affected by the department's preliminary decision regarding degradation of state waters, pursuant to 75-5-303. The term includes a person who has requested authorization to degrade high-quality waters.

~~(17)~~(17) "Load allocation" means the portion of a receiving water's loading capacity that is allocated to one of its existing or future nonpoint sources or to natural background sources.

~~(18)~~(18) "Loading capacity" means the mass of a pollutant that a water body can assimilate without a violation of water quality standards. For pollutants that cannot be measured in terms of mass, it means the maximum change that can occur from the best practicable condition in a surface water without causing a violation of the surface water quality standards.

~~(19)~~(19) "Local department of health" means the staff, including health officers, employed by a county, city, city-county, or district board of health.

~~(20)~~(20) "Metal parameters" includes but is not limited to aluminum, antimony, arsenic, beryllium, barium, cadmium, chromium, copper, fluoride, iron, lead, manganese, mercury, nickel, selenium, silver, thallium, and zinc.

~~(21)~~(21) "Mixing zone" means an area established in a permit or final decision on nondegradation issued by the department where water quality standards may be exceeded, subject to conditions that are imposed by the department and that are consistent with the rules adopted by the ~~board~~ department.

~~(22)~~(22) "Nutrient standards variance" means numeric water quality criteria for nutrients based on a determination that base numeric nutrient standards cannot be achieved because of economic impacts or because of the limits of technology. The term includes individual, general, and alternative nutrient standards variances in accordance with 75-5-313.

~~(23)~~(23) "Nutrient work group" means an advisory work group, convened by the department, representing publicly owned and privately owned point sources of pollution, nonpoint sources of pollution, and other interested parties that will advise the department on the base numeric nutrient standards, the development of nutrient standards variances, and the implementation of those standards and variances together with associated economic impacts.

~~(24)~~(24) "Other wastes" means garbage, municipal refuse, decayed wood, sawdust, shavings, bark, lime, sand, ashes, offal, night soil, oil, grease, tar, heat, chemicals, dead animals, sediment, wrecked or discarded equipment, radioactive materials, solid waste, and all other substances that may pollute state waters.

~~(25)~~(25) "Outstanding resource waters" means:

(a) state surface waters located wholly within the boundaries of areas designated as national parks or national wilderness areas as of October 1, 1995; or

(b) other surface waters or ground waters classified by the ~~board~~department under the provisions of 75-5-316 and approved by the legislature.

~~(26)~~(26) "Owner or operator" means a person who owns, leases, operates, controls, or supervises a point source.

~~(27)~~(27) "Parameter" means a physical, biological, or chemical property of state water when a value of that property affects the quality of the state water.

~~(28)~~(28) "Person" means the state, a political subdivision of the state, institution, firm, corporation, partnership, individual, or other entity and includes persons resident in Canada.

~~(29)~~(29) "Point source" means a discernible, confined, and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, or vessel or other floating craft, from which pollutants are or may be discharged.

~~(30)~~(30) (a) "Pollution" means:

(i) contamination or other alteration of the physical, chemical, or biological properties of state waters that exceeds that permitted by Montana water quality standards, including but not limited to standards relating to change in temperature, taste, color, turbidity, or odor; or

(ii) the discharge, seepage, drainage, infiltration, or flow of liquid, gaseous, solid, radioactive, or other substance into state water that will or is likely to create a nuisance or render the waters harmful, detrimental, or injurious to public health, recreation, safety, or welfare, to livestock, or to wild animals, birds, fish, or other wildlife.

(b) The term does not include:

(i) a discharge, seepage, drainage, infiltration, or flow that is authorized under the pollution discharge permit rules adopted by the ~~board~~department under this chapter;

(ii) activities conducted under this chapter that comply with the conditions imposed by the department in short-term authorizations pursuant to 75-5-308;

(iii) contamination of ground water within the boundaries of a geologic storage reservoir, as defined in 82-11-101, by a carbon dioxide injection well in accordance with a permit issued pursuant to Title 82, chapter 11, part 1;

(iv) contamination of ground water within the boundaries of an underground mine using in situ coal gasification and operating in accordance with a permit issued under 82-4-221;

(c) Contamination referred to in subsections ~~(30)(b)(iii) and (30)(b)(iv)~~ (30)(b)(iii) and (30)(b)(iv) does not require a mixing zone.

~~(31)~~(31) "Sewage" means water-carried waste products from residences, public buildings, institutions, or other buildings, including discharge from human beings or animals, together with ground water infiltration and surface water present.

~~(32)~~(32) "Sewage system" means a device for collecting or conducting sewage, industrial wastes, or other wastes to an ultimate disposal point.

~~(33)~~(33) "Standard of performance" means a standard adopted by the ~~board~~ department for the control of the discharge of pollutants that reflects the greatest degree of effluent reduction achievable through application of the best available demonstrated control technology, processes, operating methods, or other alternatives, including, when practicable, a standard permitting no discharge of pollutants.

~~(34)~~(34) (a) "State waters" means a body of water, irrigation system, or drainage system, either surface or underground.

(b) The term does not apply to:

- (i) ponds or lagoons used solely for treating, transporting, or impounding pollutants; or
- (ii) irrigation waters or land application disposal waters when the waters are used up within the irrigation or land application disposal system and the waters are not returned to state waters.

~~(35)~~(35) "Sufficient credible data" means chemical, physical, or biological monitoring data, alone or in combination with narrative information, that supports a finding as to whether a water body is achieving compliance with applicable water quality standards.

~~(36)~~(36) "Threatened water body" means a water body or stream segment for which sufficient credible

data and calculated increases in loads show that the water body or stream segment is fully supporting its designated uses but threatened for a particular designated use because of:

- (a) proposed sources that are not subject to pollution prevention or control actions required by a discharge permit, the nondegradation provisions, or reasonable land, soil, and water conservation practices; or
- (b) documented adverse pollution trends.

~~(37)~~(37) "Total maximum daily load" or "TMDL" means the sum of the individual waste load allocations for point sources and load allocations for both nonpoint sources and natural background sources established at a level necessary to achieve compliance with applicable surface water quality standards.

~~(38)~~(38) "Treatment works" means works, including sewage lagoons, installed for treating or holding sewage, industrial wastes, or other wastes.

~~(39)~~(39) "Waste load allocation" means the portion of a receiving water's loading capacity that is allocated to one of its existing or future point sources.

~~(40)~~(40) "Water quality protection practices" means those activities, prohibitions, maintenance procedures, or other management practices applied to point and nonpoint sources designed to protect, maintain, and improve the quality of state waters. Water quality protection practices include but are not limited to treatment requirements, standards of performance, effluent standards, and operating procedures and practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from material storage.

~~(41)~~(41) "Water well" means an excavation that is drilled, cored, bored, washed, driven, dug, jetted, or otherwise constructed and intended for the location, diversion, artificial recharge, or acquisition of ground water.

~~(42)~~(42) "Watershed advisory group" means a group of individuals who wish to participate in an advisory capacity in revising and reprioritizing the list of water bodies developed under 75-5-702 and in the development of TMDLs under 75-5-703, including those groups or individuals requested by the department to participate in an advisory capacity as provided in 75-5-704."

Section 30. Section 75-5-106, MCA, is amended to read:

"75-5-106. Interagency cooperation -- enforcement authorization. (1) The council, ~~board~~, ~~board~~, and the department may require the use of records of all state agencies and may seek the assistance of the agencies. When the department's review of a permit application submitted under another chapter or title is

required or requested, the department shall coordinate the review under this chapter with the review conducted by the agency or unit under the other chapter, following the time schedule for that review. State, county, and municipal officers and employees, including sanitarians and other employees of local departments of health, shall cooperate with the council, ~~board~~, ~~board~~, and the department in furthering the purposes of this chapter, so far as is practicable and consistent with their other duties.

(2) The department may authorize a local water quality district established according to the provisions of Title 7, chapter 13, part 45, to enforce the provisions of this chapter and rules adopted under this chapter on a case-by-case basis. If a local water quality district requests the authorization, the local water quality district shall present appropriate documentation to the department that a person is violating permit requirements established by the department or may be causing pollution, as defined in 75-5-103, of state waters or placing or causing to be placed wastes in a location where they are likely to cause pollution of state waters. The ~~board~~ department may adopt rules regarding the granting of enforcement authority to local water quality districts."

Section 31. Section 75-5-201, MCA, is amended to read:

"75-5-201. ~~Board rules~~ Rules authorized. (1) (a) The ~~board~~ department shall, except as provided in 75-5-411 and subject to the provisions of 75-5-203, adopt rules for the administration of this chapter.

(b) The ~~board~~ department shall adopt rules that describe the location and the times of the year when suction dredging is permissible. These rules may be adopted only after consultation with the local conservation districts in the areas subject to the rule.

(2) The ~~board's~~ department's rules may include a fee schedule or system for assessment of administrative penalties as provided under 75-5-611."

Section 32. Section 75-5-203, MCA, is amended to read:

"75-5-203. State regulations no more stringent than federal regulations or guidelines. (1) Except as provided in subsections (2) through (5) or unless required by state law, the ~~board~~ department may not adopt a rule to implement 75-5-301, 75-5-302, 75-5-303, or 75-5-310 that is more stringent than the comparable federal regulations or guidelines that address the same circumstances. The ~~board~~ department may incorporate by reference comparable federal regulations or guidelines.

(2) The ~~board-department~~ may adopt a rule to implement this chapter that is more stringent than comparable federal regulations or guidelines only if the ~~board-department~~ makes a written finding after a public hearing and public comment and based on evidence in the record that:

- (a) the proposed state standard or requirement protects public health or the environment of the state; and
- (b) the state standard or requirement to be imposed can mitigate harm to the public health or environment and is achievable under current technology.

(3) The written finding must reference pertinent, ascertainable, and peer-reviewed scientific studies contained in the record that forms the basis for the ~~board's-department's~~ conclusion. The written finding must also include information from the hearing record regarding the costs to the regulated community that are directly attributable to the proposed state standard or requirement.

(4) (a) A person affected by a rule ~~of the board that~~ that the person believes to be more stringent than comparable federal regulations or guidelines may petition the ~~board-board~~ to review the rule. If the ~~board~~ board determines that the rule is more stringent than comparable federal regulations or guidelines, the ~~board~~ department shall comply with this section by either revising the rule to conform to the federal regulations or guidelines or by making the written finding, as provided under subsection (2), within a reasonable period of time, not to exceed 8 months after receiving the petition. A petition under this section does not relieve the petitioner of the duty to comply with the challenged rule. The ~~board-department~~ may charge a petition filing fee in an amount not to exceed \$250.

(b) A person may also petition the ~~board-board~~ for a rule review under subsection (4)(a) if the ~~board~~ department adopts a rule in an area in which no federal regulations or guidelines existed and the federal government subsequently establishes comparable regulations or guidelines that are less stringent than the previously adopted ~~board-department~~ rule.

(5) This section does not apply to a rule adopted under the emergency rulemaking provisions of 2-4-303(1)."

Section 33. Section 75-5-222, MCA, is amended to read:

"75-5-222. State regulation for natural conditions. (1) The department may not apply a standard to

a water body for water quality that is more stringent than the nonanthropogenic condition of the water body. For the parameters for which the applicable standards are more stringent than the nonanthropogenic condition, the standard is the nonanthropogenic condition of the parameter in the water body. The department shall implement the standard in a manner that provides for the water quality standards for downstream waters to be attained and maintained.

(2) (a) For water bodies where the standard is more stringent than the condition of the water body but subsection (1) is not applicable, the ~~board~~-department shall adopt rules consistent with comparable federal rules and guidelines providing criteria and procedures for the department to issue variances from standards if:

(i) the condition cannot reasonably be expected to be remediated during the permit term for which the application for variance has been received; and

(ii) the discharge to which the variance applies would not materially contribute to the condition.

(b) A variance issued pursuant to subsection (2)(a) must be reviewed every 5 years and may be modified or terminated as a result of the review."

Section 34. Section 75-5-301, MCA, is amended to read:

"75-5-301. Classification and standards for state waters. Consistent with the provisions of 80-15-201 and this chapter, the ~~board~~-department shall:

(1) establish the classification of all state waters in accordance with their present and future most beneficial uses, creating an appropriate classification for streams that, due to sporadic flow, do not support an aquatic ecosystem that includes salmonid or nonsalmonid fish;

(2) formulate and adopt standards of water quality, ~~giving consideration to~~ considering the economics of waste treatment and prevention. When rules are adopted regarding temporary standards, they must conform with the requirements of 75-5-312. Standards ~~adopted by the board~~ must meet the following requirements:

(a) for carcinogens, the water quality standard for protection of human health must be the value associated with an excess lifetime cancer risk level, assuming continuous lifetime exposure, not to exceed 1×10^{-3} in the case of arsenic and 1×10^{-5} for other carcinogens. However, if a standard established at a risk level of 1×10^{-3} for arsenic or 1×10^{-5} for other carcinogens violates the maximum contaminant level obtained from 40 CFR, part 141, then the maximum contaminant level must be adopted as the standard for that carcinogen.

- (b) standards for the protection of aquatic life do not apply to ground water.
- (3) review, from time to time at intervals of not more than 3 years and, to the extent permitted by this chapter, revise established classifications of waters and adopted standards of water quality;
- (4) adopt rules governing the granting of mixing zones, requiring that mixing zones granted by the department be specifically identified and requiring that mixing zones have:
 - (a) the smallest practicable size;
 - (b) a minimum practicable effect on water uses; and
 - (c) definable boundaries;
- (5) adopt rules implementing the nondegradation policy established in 75-5-303, including but not limited to rules that:
 - (a) provide a procedure for department review and authorization of degradation;
 - (b) establish criteria for the following:
 - (i) determining important economic or social development; and
 - (ii) weighing the social and economic importance to the public of allowing the proposed project against the cost to society associated with a loss of water quality;
 - (c) establish criteria for determining whether a proposed activity or class of activities, in addition to those activities identified in 75-5-317, will result in nonsignificant changes in water quality for any parameter in order that those activities are not required to undergo review under 75-5-303(3). These criteria must be established in a manner that generally:
 - (i) equates significance with the potential for harm to human health, a beneficial use, or the environment;
 - (ii) considers both the quantity and the strength of the pollutant;
 - (iii) considers the length of time the degradation will occur;
 - (iv) considers the character of the pollutant so that greater significance is associated with carcinogens and toxins that bioaccumulate or biomagnify and lesser significance is associated with substances that are less harmful or less persistent.
 - (d) provide that changes of nitrate as nitrogen in ground water are nonsignificant if the discharge will not cause degradation of surface water and the predicted concentration of nitrate as nitrogen at the boundary of

the ground water mixing zone does not exceed:

- (i) 7.5 milligrams per liter from sources other than sewage;
 - (ii) 5.0 milligrams per liter from sewage discharged from a system that does not use level two treatment in an area where the ground water nitrate as nitrogen is 5.0 milligrams per liter or less;
 - (iii) 7.5 milligrams per liter from sewage discharged from a system using level two treatment, which must be defined in the rules; or
 - (iv) 7.5 milligrams per liter from sewage discharged from a system in areas where the ground water nitrate as nitrogen level exceeds 5.0 milligrams per liter primarily from sources other than human waste.
- (6) to the extent practicable, ensure that the rules adopted under subsection (5) establish objective and quantifiable criteria for various parameters. These criteria must, to the extent practicable, constitute guidelines for granting or denying applications for authorization to degrade high-quality waters under the policy established in 75-5-303(2) and (3).
- (7) adopt rules to implement this section."

Section 35. Section 75-5-302, MCA, is amended to read:

"75-5-302. Revising classifications in accordance with existing, present, and future most beneficial uses of water bodies. When the ~~board or~~ department is presented with facts indicating that a body of water is not properly classified in accordance with its existing, present, and future most beneficial uses, the department shall, within 90 days, evaluate the facts and ~~advise the board whether the water body is not properly classified.~~ If the ~~board~~ department determines that the water body is not properly classified, the ~~board~~ department shall initiate rulemaking to properly classify the water body in accordance with its existing, present, and future most beneficial uses. ~~Board action~~ Action pursuant to this section is subject to 75-5-307."

Section 36. Section 75-5-303, MCA, is amended to read:

"75-5-303. Nondegradation policy. (1) Existing uses of state waters and the level of water quality necessary to protect those uses must be maintained and protected.

(2) Unless authorized by the department under subsection (3) or exempted from review under 75-5-317, the quality of high-quality waters must be maintained.

(3) The department may not authorize degradation of high-quality waters unless it has been affirmatively demonstrated by a preponderance of evidence to the department that:

- (a) degradation is necessary because there are no economically, environmentally, and technologically feasible modifications to the proposed project that would result in no degradation;
- (b) the proposed project will result in important economic or social development and that the benefit of the development exceeds the costs to society of allowing degradation of high-quality waters;
- (c) existing and anticipated use of state waters will be fully protected; and
- (d) the least degrading water quality protection practices determined by the department to be economically, environmentally, and technologically feasible will be fully implemented by the applicant prior to and during the proposed activity.

(4) The department shall issue a preliminary decision either denying or authorizing degradation and shall provide public notice and a 30-day comment period prior to issuing a final decision. The department's preliminary and final decisions must include:

- (a) a statement of the basis for the decision; and
- (b) a detailed description of all conditions applied to any authorization to degrade state waters, including, when applicable, monitoring requirements, required water protection practices, reporting requirements, effluent limits, designation of the mixing zones, the limits of degradation authorized, and methods of determining compliance with the authorization for degradation.

(5) An interested person wishing to challenge a final department decision may request a hearing before the ~~board~~ board within 30 days of the final department decision. The contested case procedures of Title 2, chapter 4, part 6, apply to a hearing under this section.

(6) Periodically, but not more often than every 5 years, the department may review authorizations to degrade state waters. Following the review, the department may, after timely notice and opportunity for hearing, modify the authorization if the department determines that an economically, environmentally, and technologically feasible modification to the development exists. The decision by the department to modify an authorization may be appealed to the ~~board~~ board.

(7) The ~~board~~ department may not issue an authorization to degrade state waters that are classified as outstanding resource waters.

(8) The ~~board~~department shall adopt rules to implement this section."

Section 37. Section 75-5-304, MCA, is amended to read:

"75-5-304. Adoption of standards -- pretreatment, effluent, performance. (1) The ~~board~~department shall:

- (a) adopt pretreatment standards for wastewater discharged into a municipal disposal system;
- (b) adopt effluent standards as defined in 75-5-103;
- (c) adopt toxic effluent standards and prohibitions;
- (d) establish standards of performance for new point source discharges; and
- (e) adopt rules necessary to ensure the primacy of the department to regulate cooling water intake structures under 33 U.S.C. 1326(b).

(2) In taking action under subsection (1), the ~~board~~department shall ensure that the standards are cost-effective and economically, environmentally, and technologically feasible."

Section 38. Section 75-5-305, MCA, is amended to read:

"75-5-305. Adoption of requirements for treatment of wastes -- variance procedure -- appeals.

(1) The ~~board~~department may establish minimum requirements for the treatment of wastes. For cases in which the federal government has adopted technology-based treatment requirements for a particular industry or activity in 40 CFR, chapter I, subchapter N, the ~~board~~department shall adopt those requirements by reference. To the extent that the federal government has not adopted minimum treatment requirements for a particular industry or activity, the ~~board~~department may do so, through rulemaking, for parameters likely to affect beneficial uses, ensuring that the requirements are cost-effective and economically, environmentally, and technologically feasible. Except for the technology-based treatment requirements set forth in 40 CFR, chapter I, subchapter N, minimum treatment may not be required to address the discharge of a parameter when the discharge is considered nonsignificant under rules adopted pursuant to 75-5-301.

(2) (a) The ~~board~~department shall establish minimum requirements for the control and disposal of sewage from private and public buildings, including standards and procedures for variances from the requirements.

(b) For gray water reuse systems, the ~~board~~department shall establish rules that:

(i) allow the diversion of gray water from wastewater treatment systems and limit the amount of gray water flow allowed by permit;

(ii) address the uses of gray water, including when and how gray water may be applied to land; and

(iii) include any other provisions that the ~~board~~department considers necessary to ensure that gray water reuse systems comply with laws and regulations and protect public health and the environment.

(3) An applicant for a variance from minimum requirements adopted by a local board of health pursuant to 50-2-116 may appeal the local board of health's final decision to the department by submitting a written request for a hearing within 30 days after the decision. The written request must describe the activity for which the variance is requested, include copies of all documents submitted to the local board of health in support of the variance, and specify the reasons for the appeal of the local board of health's final decision.

(4) The department shall conduct a hearing on the request pursuant to Title 2, chapter 4, part 6. Within 30 days after the hearing, the department shall grant, conditionally grant, or deny the variance. The department shall base its decision on the ~~board's~~department's standards for a variance.

(5) A decision of the department pursuant to subsection (4) is appealable to district court under the provisions of Title 2, chapter 4, part 7."

Section 39. Section 75-5-307, MCA, is amended to read:

"75-5-307. Hearings required for classification, formulation of standards, and rulemaking. (1)

Before streams are classified or standards established or modified or rules made, revoked, or modified, the ~~board~~department shall hold a public hearing. Notice of the hearing specifying the waters concerned and the classification, standards, or modification of them and any rules proposed to be made, revoked, or modified ~~shall~~ must be published at least once a week for 3 consecutive weeks in a daily newspaper of general circulation in the area affected. Notice ~~shall also~~ must be mailed directly to persons the ~~board~~department believes may be affected by the proposed action. The council ~~shall~~ must be given not less than 30 days prior to first publication to comment on the proposed action.

(2) At a hearing held under this section, the ~~board~~department shall give all interested persons reasonable opportunity to submit data, views, or arguments, orally or in writing. The ~~board~~department may

make rules for the orderly conduct of the hearing but need not require compliance with the rules of evidence or procedure applicable to hearings held under 75-5-611."

Section 40. Section 75-5-308, MCA, is amended to read:

"75-5-308. Short-term water authorizations -- water quality standards. (1) Because these activities promote the public interest, the department may, if necessary, authorize short-term exemptions from the water quality standards for the following activities:

(a) emergency remediation activities that have been approved, authorized, or required by the department; and

(b) application of a pesticide that is registered by the United States environmental protection agency pursuant to 7 U.S.C. 136(a) when it is used to control nuisance aquatic organisms or to eliminate undesirable and nonnative aquatic species.

(2) An authorization must include conditions that minimize, to the extent practicable, the magnitude of any change in the concentration of the parameters affected by the activity and the length of time during which any change may occur. The authorization must also include conditions that prevent significant risk to public health and that ensure that existing and designated uses of state water are protected and maintained upon completion of the activity. Authorizations issued under this section may include conditions that require water quality or quantity monitoring and reporting. In the performance of its responsibilities under this section, the department may negotiate operating agreements with other departments of state government that are intended to minimize duplication in review of activities eligible for authorizations under this section.

(3) An authorization to use a pesticide does not relieve a person from the duty to comply with Title 80, chapters 8 and 15. The department may not authorize an exemption from water quality standards for an activity that requires a discharge permit under rules adopted ~~by the board~~ pursuant to 75-5-401."

Section 41. Section 75-5-310, MCA, is amended to read:

"75-5-310. Site-specific standards of water quality for aquatic life. (1) Notwithstanding any other provisions of this chapter and except as provided in subsection (2), the ~~board~~ department, upon application by a permit applicant, permittee, or person potentially liable under any state or federal environmental remediation

statute, shall adopt site-specific standards of water quality for aquatic life, both acute and chronic, as the standards of water quality required under 75-5-301(2) and (3). The site-specific standards of water quality must be developed in accordance with the procedures set forth in draft or final federal regulations, guidelines, or criteria.

(2) If the department, based upon its review of an application submitted under subsection (1) and sound scientific, technical, and available site-specific evidence, determines that the development of site-specific criteria in accordance with draft or final federal regulations, guidelines, or criteria would not be protective of beneficial uses, the department, within 90 days of the submission of an application under subsection (1), shall notify the applicant in writing of its determination and of all additional procedures that the applicant is required to comply with in the development of site-specific standards of water quality under this section. If there is a dispute between the department and the applicant as to the additional procedures, the ~~board~~board shall, on the request of the department or the applicant, hear and determine the dispute. The ~~board's~~board's decision must be based on sound scientific, technical, and available site-specific evidence."

Section 42. Section 75-5-311, MCA, is amended to read:

"75-5-311. Local water quality districts -- ~~board~~department approval -- local water quality programs. (1) A county that establishes a local water quality district according to the procedures specified in Title 7, chapter 13, part 45, shall, in consultation with the department, undertake planning and information-gathering activities necessary to develop a proposed local water quality program.

(2) A county may implement a local water quality program in a local water quality district if the program is approved by the ~~board~~department after a hearing conducted under 75-5-202.

(3) In approving a local water quality program, the ~~board~~department shall determine that the program is consistent with the purposes and requirements of Title 75, chapter 5, and that the program will be effective in protecting, preserving, and improving the quality of surface water and ground water, considering the administrative organization, staff, and financial and other resources available to implement the program.

(4) Subject to the ~~board's~~department approval, the commissioners and the governing bodies of cities and towns that participate in a local water quality district may adopt local ordinances to regulate the following specific facilities and sources of pollution:

- (a) onsite wastewater disposal facilities;
 - (b) storm water runoff from paved surfaces;
 - (c) service connections between buildings and publicly owned sewer mains;
 - (d) facilities that use or store halogenated and nonhalogenated solvents, including hazardous substances that are referenced in 40 CFR 261.31, United States environmental protection agency hazardous waste numbers F001 through F005, as amended; and
 - (e) internal combustion engine lubricants.
- (5) (a) For the facilities and sources of pollution included in subsection (4) and consistent with the provisions of subsection (6), the local ordinances may:
- (i) be compatible with or more stringent or more extensive than the requirements imposed by 75-5-304, 75-5-305, and 75-5-401 through 75-5-404 and rules adopted under those sections to protect water quality, establish waste discharge permit requirements, and establish best management practices for substances that have the potential to pollute state waters;
 - (ii) provide for administrative procedures, administrative orders and actions, and civil enforcement actions that are consistent with 75-5-601 through 75-5-604, 75-5-611 through 75-5-616, 75-5-621, and 75-5-622 and rules adopted under those sections; and
 - (iii) provide for civil penalties not to exceed \$1,000 per violation, provided that each day of violation of a local ordinance constitutes a separate violation, and criminal penalties not to exceed \$500 per day of violation or imprisonment for not more than 30 days, or both.
- (b) ~~Board~~ Department approval of an ordinance or local law that is more stringent than the comparable state law is subject to the provisions of 75-5-203.
- (6) The local ordinances authorized by this section may not:
- (a) duplicate the department's requirements and procedures relating to permitting of waste discharge sources and enforcement of water quality standards;
 - (b) regulate any facility or source of pollution to the extent that the facility or source is:
 - (i) required to obtain a permit or other approval from the department or federal government or is the subject of an administrative order, a consent decree, or an enforcement action pursuant to Title 75, chapter 5, part 4; Title 75, chapter 6; Title 75, chapter 10; the federal Comprehensive Environmental Response,

Compensation, and Liability Act of 1980, 42 U.S.C. 9601 through 9675, as amended; or federal environmental, safety, or health statutes and regulations;

(ii) exempted from obtaining a permit or other approval from the department because the facility or source is required to obtain a permit or other approval from another state agency or is the subject of an enforcement action by another state agency; or

(iii) subject to the provisions of Title 80, chapter 8 or chapter 15.

(7) If the boundaries of a district are changed after the ~~board~~department has approved the local water quality program for the district, the board of directors of the local water quality district shall submit a program amendment to the ~~board~~department and obtain ~~the board's~~department approval of the program amendment before implementing the local water quality program in areas that have been added to the district.

(8) The department shall monitor the implementation of local water quality programs to ensure that the programs are adequate to protect, preserve, and improve the quality of the surface water and ground water and are being administered in a manner consistent with the purposes and requirements of Title 75, chapter 5. ~~If the department finds that a local water quality program is not adequate to protect, preserve, and improve the quality of the surface water and ground water or is not being administered in a manner consistent with the purposes and requirements of Title 75, chapter 5, the department shall report to the board.~~

(9) If the ~~board~~department determines that a local water quality program is inadequate to protect, preserve, and improve the quality of the surface water and ground water in the local water quality district or that the program is being administered in a manner inconsistent with Title 75, chapter 5, the ~~board~~department shall give notice and conduct a hearing on the matter.

(10) If after the hearing the ~~board~~department determines that the program is inadequate to protect, preserve, and improve the quality of the surface water and ground water in the local water quality district or that it is not being administered in a manner consistent with the purposes of Title 75, chapter 5, the ~~board~~department shall require that necessary corrective measures be taken within a reasonable time, not to exceed 60 days.

(11) If an ordinance adopted under this section conflicts with a requirement imposed by the department's water quality program, the department's requirement supersedes the local ordinance.

(12) If the ~~board~~department finds that, because of the complexity or magnitude of a particular water

pollution source, the control of the source is beyond the reasonable capability of a local water quality district or may be more efficiently and economically performed at the state level, the ~~board may direct the department to~~ may assume and retain control over the source. A charge may not be assessed against the local water quality district for that source. Findings made under this subsection may be based on the nature of the source involved or on the source's relationship to the size of the community in which it is located."

Section 43. Section 75-5-312, MCA, is amended to read:

"75-5-312. Temporary water quality standards. (1) The ~~board~~ department may, ~~upon~~ recommendation of the department on its own accord or upon a petition for rulemaking, as provided in 2-4-315, by a person, including a permit applicant or permittee, temporarily modify a water quality standard for a specific water body or segment on a parameter-by-parameter basis in those instances in which substantive information indicates that the water body or segment is not supporting its designated uses. When the ~~board~~ department adopts temporary standards, the goal is to improve water quality to the point at which all the beneficial uses designated for that water body or segment are supported.

(2) As a condition for establishing temporary water quality standards for a particular water body or segment, the department or the petitioner, as applicable, shall prepare a support document and a preliminary implementation plan for use by the ~~board~~ department in determining whether to adopt the proposed temporary water quality standards. A person shall submit a support document and a preliminary implementation plan to the department for its review at least 60 days prior to filing a petition with the ~~board~~ department requesting the adoption of temporary water quality standards.

(3) The support document prepared by the department or the petitioner, as applicable, must describe:

- (a) the chemical, biological, and physical condition of the water body or segment;
- (b) the specific water quality limiting factors affecting the water body or segment;
- (c) the existing water quality standards that are not being achieved;
- (d) the temporary modifications to the existing water quality standards being requested;
- (e) existing beneficial uses; and
- (f) the designated uses considered attainable in the absence of the water quality limiting factors.

(4) The preliminary implementation plan prepared by the department or the petitioner, as applicable,

must contain:

(a) a description of the proposed actions that will eliminate the water quality limiting factors identified in subsection (3)(b) to the extent considered achievable; and

(b) a schedule for implementing the proposed actions that ensures that the existing water quality standards for the parameter or parameters at issue are met as soon as reasonably practicable.

(5) Within 30 days after the ~~board's~~ department's adoption of temporary water quality standards, the department or the petitioner, as applicable, shall:

(a) modify the preliminary implementation plan and schedule to reflect the requirements and timeframe adopted by the ~~board~~ department for the temporary standards; and

(b) develop a detailed work plan describing the implementation activities that will be conducted during the first field season of the temporary standards. The work plan must be approved by the director of the department.

(6) By March 1 of each year that the temporary water quality standards are in effect, the department or the petitioner, as applicable, shall submit a detailed work plan describing the implementation activities that will be conducted during that season. The annual work plans must be approved by the director of the department. The department shall maintain copies of the implementation plan, schedule, and annual work plans and any modifications to those plans and schedule.

(7) Upon the ~~board's~~ department's adoption of a temporary water quality standard, the department shall ensure that reasonable conditions and limitations designed to achieve compliance with the implementation plan are established in appropriate discharge permits.

(8) (a) A temporary modification of a water quality standard may not result in adverse impacts to existing beneficial uses or be established for a total period longer than 20 years.

(b) During the period of the temporary modification, the ~~board~~ department may not allow a discharge that will cause overall water quality to become worse than the overall quality of the water body or segment prior to the discharge.

(9) If a state water is designated as having temporary standards, the department shall report ~~to the board~~ at least every 3 years ~~or upon request of the board~~ regarding whether adequate efforts have been made to implement the plans submitted as the basis for the temporary standards.

(10) The ~~board~~department shall review the temporary standards and implementation plan at least every 3 years at a public hearing for which notice and an opportunity for comment have been provided. During this review, the ~~board~~department shall consider the progress made in restoring water quality to a level that achieves the goal of the temporary water quality standards. The ~~board~~department may terminate or modify the temporary standards based on information submitted at the time of review.

(11) The ~~board~~department shall terminate a temporary standard for a parameter if:

(a) values for the modified parameter or parameters improve to conditions that support all designated uses for that classification;

(b) the state water for which the temporary standard is adopted is reclassified as provided for in 75-5-302; or

(c) the plan submitted in support of the temporary water quality standard is not being implemented according to the plan's schedule or modifications to that plan or schedule made by the ~~board or~~ department.

(12) The ~~board or the~~ department may modify the implementation plan if there is convincing evidence that the plan needs modification.

(13) If a temporary standard for a parameter in a particular state water is terminated because the plan submitted in support of the temporary water quality standard is not being implemented according to the plan's schedule or modifications to that schedule made by the ~~board or~~ department, a person may request a new temporary standard by submitting both a petition for rulemaking and an implementation plan that meet the requirements of subsection (4). However, the ~~board~~department may not adopt another temporary standard for the parameter in the state water that would cumulatively be in effect for a total period longer than 20 years for the parameter in the state water."

Section 44. Section 75-5-313, MCA, is amended to read:

"75-5-313. Nutrient standards variances -- individual, general, and alternative. (1) The department shall, on a case-by-case basis, approve the use of an individual nutrient standards variance in a discharge permit based upon adequate justification pursuant to subsection (2) that attainment of the base numeric nutrient standards is precluded due to economic impacts, limits of technology, or both.

(2) (a) The department, in consultation with the nutrient work group, shall develop guidelines for

individual nutrient standards variances to ensure that the economic impacts from base numeric nutrient standards on public and private systems are equally and adequately addressed. In developing those guidelines, the department and the nutrient work group shall consider economic impacts appropriate for application within Montana, acknowledging that advanced treatment technologies for removing nutrients will result in significant and widespread economic impacts.

(b) The department shall consult with the nutrient work group prior to recommending base numeric nutrient standards ~~to the board~~ and shall continue to consult with the nutrient work group in implementing individual nutrient standards variances.

(3) The department shall review each application for an individual nutrient standards variance on a case-by-case basis to determine if there are reasonable alternatives, such as trading, permit compliance schedules, or the alternatives provided in subsections (5), (10), and (11), that preclude the need for the individual nutrient standards variance.

(4) Individual nutrient standards variances approved by the department become effective and may be incorporated into a permit only after a public hearing and adoption by the department under the rulemaking procedures of Title 2, chapter 4, part 3.

(5) (a) Because the treatment of wastewater to base numeric nutrient standards would result in substantial and widespread economic impacts on a statewide basis, a permittee who meets the requirements established in subsection (5)(b) may, subject to subsection (6), apply for a general nutrient standards variance.

(b) The department shall approve the use of a general nutrient standards variance for permittees with wastewater treatment facilities that discharge to surface water:

(i) in an amount greater than or equal to 1 million gallons per day of effluent if the permittee treats the discharge to, at a minimum, 1 milligram total phosphorus per liter and 10 milligrams total nitrogen per liter, calculated as a monthly average during the period in which the base numeric nutrient standards apply;

(ii) in an amount less than 1 million gallons per day of effluent if the permittee treats the discharge to, at a minimum, 2 milligrams total phosphorus per liter and 15 milligrams total nitrogen per liter, calculated as a monthly average during the period in which the base numeric nutrient standards apply; or

(iii) from lagoons that were not designed to actively remove nutrients if the permittee maintains the performance of the lagoon at a level equal to the performance of the lagoon on October 1, 2011.

(6) (a) The monthly average concentrations for total nitrogen and total phosphorus in subsection (5)(b) are the highest concentrations allowed in each category and remain in effect until May 31, 2016.

(b) Categories and concentrations in subsection (5)(b) must be adopted by rule by May 31, 2016.

(7) (a) Immediately after May 31, 2016, and every 3 years thereafter, the department, in consultation with the nutrient work group, shall revisit and update the concentration levels provided in subsection (5)(b).

(b) If more cost-effective and efficient treatment technologies are available, the concentration levels provided in subsection (5)(b) must be updated pursuant to subsection (7)(c) to reflect those changes.

(c) The updates become effective and may be incorporated into a permit only after a public hearing and adoption by the department under the rulemaking procedures of Title 2, chapter 4, part 3.

(8) An individual, general, or alternative nutrient standards variance may be established for a period not to exceed 20 years and must be reviewed by the department every 3 years from the date of adoption to ensure that the justification for its adoption remains valid.

(9) (a) Permittees receiving an individual, general, or alternative nutrient standards variance shall evaluate current facility operations to optimize nutrient reduction with existing infrastructure and shall analyze cost-effective methods of reducing nutrient loading, including but not limited to nutrient trading without substantial investment in new infrastructure.

(b) The department may request that a permittee provide the results of an optimization study and nutrient reduction analysis to the department within 2 years of receiving an individual, general, or alternative nutrient variance.

(10) (a) A permittee may request that the department provide an alternative nutrient standards variance if the permittee demonstrates that achieving nutrient concentrations established for an individual or general nutrient standards variance would result in an insignificant reduction of instream nutrient loading.

(b) A permittee receiving an alternative nutrient standards variance shall comply with the requirements of subsections (8) and (9) and shall demonstrate that the permittee's contribution to nutrient concentrations in the watershed continues to remain insignificant.

(11) The department shall encourage the use of alternative effluent management methods to reduce instream nutrient loading, including reuse, recharge, land application, and trading.

(12) On or before July 1 of each year, the department, in consultation with the nutrient work group,

shall report to the water policy committee established in 5-5-231 by providing a summary of the status of the base numeric nutrient standards, the nutrient standards variances, and the implementation of those standards and variances, including estimated economic impacts.

(13) On or before September 1 of each year preceding the convening of a regular session of the legislature, the department, in consultation with the nutrient work group, shall summarize the two most recent reports provided under subsection (12) and submit to the water policy committee established in 5-5-231 this final summary in accordance with 5-11-210."

Section 45. Section 75-5-315, MCA, is amended to read:

"75-5-315. Outstanding resource waters -- statement of purpose. (1) The legislature, understanding the requirements of applicable federal law and the uniqueness of Montana's water resource, recognizes that certain state waters are of such environmental, ecological, or economic value that the state should, upon a showing of necessity, prohibit, to the greatest extent practicable, changes to the existing water quality of those waters. Outstanding resource waters must be afforded the greatest protection feasible under state law, after thorough examination.

(2) The purpose of 75-5-316 and this section is to provide this protection, when necessary, and to provide guidance to the ~~board~~ department in establishing rules to accomplish that level of protection."

Section 46. Section 75-5-316, MCA, is amended to read:

"75-5-316. Outstanding resource water classification -- rules -- criteria -- limitations -- procedure -- definition. (1) As provided under the provisions of 75-5-301 and this section, the ~~board~~ department may adopt rules regarding the classification of waters as outstanding resource waters.

(2) The department may not:

(a) grant an authorization to degrade under 75-5-303 in outstanding resource waters; or
(b) allow a new or increased point source discharge that would result in a permanent change in the water quality of an outstanding resource water.

(3) (a) A person may petition the ~~board~~ department for rulemaking to classify state waters as outstanding resource waters. The ~~board~~ department shall initially review a petition against the criteria identified

in subsection (3)(c) to determine whether the petition contains sufficient credible information for the ~~board~~ department to accept the petition.

(b) The ~~board~~ department may reject a petition without further review if it determines that the petition does not contain the sufficient credible information required by subsection (3)(a). If the ~~board~~ department rejects a petition under this subsection (3)(b), it shall specify in writing the reasons for the rejection and the petition's deficiencies.

(c) The ~~board~~ department may not adopt a rule classifying state waters as outstanding resource waters until it accepts a petition and makes a written finding containing the provisions enumerated in subsection (3)(d) that, based on a preponderance of the evidence:

(i) the waters identified in the petition constitute an outstanding resource based on the criteria provided in subsection (4);

(ii) the increased protection under the classification is necessary to protect the outstanding resource identified under subsection (3)(a) because of a finding that the outstanding resource is at risk of having one or more of the criteria provided in subsection (4) compromised as a result of pollution; and

(iii) classification as an outstanding resource water is necessary because of a finding that there is no other effective process available that will achieve the necessary protection.

(d) The written finding provided for in subsection (3)(c) must:

(i) identify the criteria provided in subsection (4) that ~~the board believes serve~~ serve as justification for the determination that the water is an outstanding resource;

(ii) specifically identify the criteria that are at risk and explain why those criteria are at risk; and

(iii) specifically explain why other available processes, including the requirements of 75-5-303, will not achieve the necessary protection.

(4) The ~~board~~ department shall consider the following criteria in determining whether certain state waters are outstanding resource waters. However, the ~~board~~ department may determine that compliance with one or more of these criteria is insufficient to warrant classification of the water as an outstanding resource water. The ~~board~~ department shall consider:

(a) whether the waters have been designated as wild and scenic;

(b) the presence of endangered or threatened species in the waters;

- (c) the presence of an outstanding recreational fishery in the waters;
- (d) whether the waters provide the only source of suitable water for a municipality or industry;
- (e) whether the waters provide the only source of suitable water for domestic water supply; and
- (f) other factors that indicate outstanding environmental or economic values not specifically

mentioned in this subsection (4).

- (5) Before accepting a petition, the ~~board~~department shall:

- (a) publish a notice and brief description of the petition in a daily newspaper of general circulation in the area affected and make copies of the proposal available to the public. The cost of publication must be paid by the petitioner.

- (b) provide for a 30-day written public comment period regarding whether the petition contains sufficient credible information, as provided in subsection (3)(b), prior to the hearing required in subsection (5)(c);

- (c) hold a public hearing regarding the petition and its contents and allow further written and oral testimony at the hearing;

- (d) issue a proposed decision, including:

- (i) the written finding provided for in subsection (3)(c); and

- (ii) the ~~board's~~department's acceptance or rejection of the petition;

- (e) provide for a 30-day public comment period regarding the ~~board's~~department's proposed decision; and

- (f) issue a final decision on acceptance or rejection of the petition, which must include a response to comments ~~that were~~ received by the ~~board~~department, and make copies of this decision available to the public.

- (6) (a) After acceptance of a petition, the ~~board shall direct the~~ department to shall prepare an environmental impact statement, as provided under Title 75, chapter 1, part 2, and this section.

- (b) (i) The petitioner is responsible for all of the costs associated with gathering and compiling data and information, and completing the environmental impact statement.

- (ii) Before the department may initiate work on the environmental impact statement, the petitioner shall pay the estimated cost of completing the environmental impact statement, as determined by the department.

(iii) Upon completion of the environmental impact statement, the petitioner shall pay the department any costs that exceeded the estimated cost. If the cost of the environmental impact statement was less than the estimated cost paid by the petitioner, the department shall reimburse the difference to the petitioner.

(iv) The ~~board~~ department may not grant or deny a petition until full payment for the environmental impact statement ~~has been~~ is received ~~by the department~~.

(7) The ~~board~~ department shall consult with other relevant state agencies and county governments when reviewing outstanding resource water classification petitions.

(8) (a) After completion of an environmental impact statement and consultation with state agencies and local governments, the ~~board~~ department may deny an accepted outstanding resource water classification petition if it finds that:

(i) the requirements of subsection (3)(c) have not been met; or

(ii) based on information available to the ~~board~~ department from the environmental impact statement or otherwise, approving the outstanding resource waters classification petition would cause significant adverse environmental, social, or economic impacts.

(b) If the ~~board~~ department denies the petition, it shall identify its reasons for petition denial.

(c) If the ~~board~~ department grants the petition, the ~~board~~ department shall initiate rulemaking to classify the waters as outstanding resource waters.

(9) A rule classifying state waters as outstanding resource waters under this section may be adopted but is not effective until approved by the legislature.

(10) The ~~board~~ department may not postpone or deny an application for an authorization to degrade state waters under 75-5-303 based on pending:

(a) ~~board~~ department action on an outstanding resource water classification petition regarding those waters; or

(b) legislative approval of ~~board~~ department action designating those waters as outstanding resource waters.

(11) As used in this section, "petitioner" means an individual, corporation, partnership, firm, association, or other private or public entity that petitions the ~~board~~ department to adopt rules to classify waters as outstanding resource waters."

Section 47. Section 75-5-318, MCA, is amended to read:

"75-5-318. Short-term water quality standards for turbidity. (1) Upon authorization by the department or the department of fish, wildlife, and parks pursuant to subsection (4), the short-term water quality standards for total suspended sediment and turbidity resulting from stream-related construction activities or stream enhancement projects are the narrative standards for total suspended sediment adopted by the ~~board~~ department under 75-5-301. If a short-term narrative standard is authorized under this section, the numeric standard for turbidity adopted by the ~~board~~ department under 75-5-301 does not apply to the affected water body during the term of the narrative standard.

(2) The department shall review each application for short-term standards on a case-by-case basis to determine whether there are reasonable alternatives that preclude the need for a narrative standard. If the department determines that the numeric standard for turbidity adopted ~~by the board~~ under 75-5-301 cannot be achieved during the term of the activity and that there are no reasonable alternatives to achieve the numeric standard, the department may authorize the use of a narrative standard for a specified term.

(3) Each authorization issued by the department must include conditions that minimize, to the extent practicable, the magnitude of any change in water quality and the length of time during which any change may occur. The authorization must also include site-specific conditions that ensure that the activity is not harmful, detrimental, or injurious to public health and the uses of state waters and that ensure that existing and designated beneficial uses of state water are protected and maintained upon completion of the activity. The department may not authorize short-term narrative standards for activities requiring a discharge permit under rules adopted ~~by the board~~ pursuant to 75-5-401. Authorizations issued under this section may include conditions that require water quality or quantity monitoring and reporting.

(4) In the performance of its responsibilities under this section, the department may negotiate operating agreements with other departments of state government that are intended to minimize duplication in review of activities eligible for authorizations under this section. The department of fish, wildlife, and parks may, in accordance with subsections (1), (2), and (3), authorize short-term water quality standards for total suspended sediment and turbidity for any stream construction project that it reviews under Title 75, chapter 7, part 1, or Title 87, chapter 5, part 5."

Section 48. Section 75-5-401, MCA, is amended to read:

"75-5-401. (Temporary) ~~Board rules~~ Rules for permits -- ground water exclusions. (1) Except as provided in subsection (5), the ~~board~~ department shall adopt rules:

(a) governing application for permits to discharge sewage, industrial wastes, or other wastes into state waters, including rules requiring the filing of plans and specifications relating to the construction, modification, or operation of disposal systems;

(b) governing the issuance, denial, modification, or revocation of permits. The ~~board~~ department may not require a permit for a water conveyance structure or for a natural spring if the water discharged to state waters does not contain industrial waste, sewage, or other wastes. Discharge to surface water of ground water that is not altered from its ambient quality does not constitute a discharge requiring a permit under this part if:

(i) the discharge does not contain industrial waste, sewage, or other wastes;

(ii) the water discharged does not cause the receiving waters to exceed applicable standards for any parameters; and

(iii) to the extent that the receiving waters in their ambient state exceed standards for any parameters, the discharge does not increase the concentration of the parameters.

(c) governing authorization to discharge under a general permit for storm water associated with construction activity. These rules must allow an owner or operator to notify the department of the intent to be covered under the general permit. This notice of intent must include a signed pollution prevention plan that requires the applicant to implement best management practices in accordance with the general permit. The rules must authorize the owner or operator to discharge under the general permit on receipt of the notice and plan by the department.

(2) The rules must allow the issuance or continuance of a permit only if the department finds that operation consistent with the limitations of the permit will not result in pollution of any state waters, except that the rules may allow the issuance of a temporary permit under which pollution may result if the department ensures that the permit contains a compliance schedule designed to meet all applicable effluent standards and water quality standards in the shortest reasonable period of time.

(3) The rules must provide that the department may revoke a permit if the department finds that the

holder of the permit has violated its terms, unless the department also finds that the violation was accidental and unforeseeable and that the holder of the permit corrected the condition resulting in the violation as soon as was reasonably possible.

(4) The ~~board~~department may adopt rules governing reclamation of sites disturbed by construction, modification, or operation of permitted activities for which a bond is voluntarily filed by a permittee pursuant to 75-5-405, including rules for the establishment of criteria and procedures governing release of the bond or other surety and release of portions of a bond or other surety.

(5) Discharges of sewage, industrial wastes, or other wastes into state ground waters from the following activities or operations are not subject to the ground water permit requirements adopted under subsections (1) through (4):

- (a) discharges or activities at wells injecting fluids associated with oil and gas exploration and production regulated under the federal underground injection control program;
- (b) disposal by solid waste management systems licensed pursuant to 75-10-221;
- (c) individuals disposing of their own normal household wastes on their own property;
- (d) hazardous waste management facilities permitted pursuant to 75-10-406;
- (e) water injection wells, reserve pits, and produced water pits used in oil and gas field operations and approved pursuant to Title 82, chapter 11;
- (f) agricultural irrigation facilities;
- (g) storm water disposal or storm water detention facilities;
- (h) subsurface disposal systems for sanitary wastes serving individual residences;
- (i) in situ mining of uranium facilities controlled under Title 82, chapter 4, part 2;
- (j) mining operations subject to operating permits or exploration licenses in compliance with The Strip and Underground Mine Reclamation Act, Title 82, chapter 4, part 2, or the metal mine reclamation laws, Title 82, chapter 4, part 3; or
- (k) projects reviewed under the provisions of the Montana Major Facility Siting Act, Title 75, chapter 20.

(6) Notwithstanding the provisions of 75-5-301(4), mixing zones for activities excluded from permit requirements under subsection (5) of this section must be established by the permitting agency for those

activities in accordance with 75-5-301(4)(a) through (4)(c).

(7) Notwithstanding the exclusions set forth in subsection (5), any excluded source that the department determines may be causing or is likely to cause violations of ground water quality standards may be required to submit monitoring information pursuant to 75-5-602.

(8) The ~~board~~department may adopt rules identifying other activities or operations from which a discharge of sewage, industrial wastes, or other wastes into state ground waters is not subject to the ground water permit requirements adopted under subsections (1) through (4).

(9) The ~~board~~department may adopt rules authorizing general permits for categories of point source discharges. The rules may authorize discharge upon issuance of an individual authorization by the department or upon receipt of a notice of intent to be covered under the general permit.

75-5-401. (Effective on occurrence of contingency) ~~Board rules~~ Rules for permits -- ground water exclusions. (1) Except as provided in subsection (5), the ~~board~~department shall adopt rules:

(a) governing application for permits to discharge sewage, industrial wastes, or other wastes into state waters, including rules requiring the filing of plans and specifications relating to the construction, modification, or operation of disposal systems;

(b) governing the issuance, denial, modification, or revocation of permits. The ~~board~~department may not require a permit for a water conveyance structure or for a natural spring if the water discharged to state waters does not contain industrial waste, sewage, or other wastes. Discharge to surface water of ground water that is not altered from its ambient quality does not constitute a discharge requiring a permit under this part if:

(i) the discharge does not contain industrial waste, sewage, or other wastes;

(ii) the water discharged does not cause the receiving waters to exceed applicable standards for any parameters; and

(iii) to the extent that the receiving waters in their ambient state exceed standards for any parameters, the discharge does not increase the concentration of the parameters.

(c) governing authorization to discharge under a general permit for storm water associated with construction activity. These rules must allow an owner or operator to notify the department of the intent to be covered under the general permit. This notice of intent must include a signed pollution prevention plan that requires the applicant to implement best management practices in accordance with the general permit. The

rules must authorize the owner or operator to discharge under the general permit on receipt of the notice and plan by the department.

(2) The rules must allow the issuance or continuance of a permit only if the department finds that operation consistent with the limitations of the permit will not result in pollution of any state waters, except that the rules may allow the issuance of a temporary permit under which pollution may result if the department ensures that the permit contains a compliance schedule designed to meet all applicable effluent standards and water quality standards in the shortest reasonable period of time.

(3) The rules must provide that the department may revoke a permit if the department finds that the holder of the permit has violated its terms, unless the department also finds that the violation was accidental and unforeseeable and that the holder of the permit corrected the condition resulting in the violation as soon as was reasonably possible.

(4) The ~~board~~department may adopt rules governing reclamation of sites disturbed by construction, modification, or operation of permitted activities for which a bond is voluntarily filed by a permittee pursuant to 75-5-405, including rules for the establishment of criteria and procedures governing release of the bond or other surety and release of portions of a bond or other surety.

(5) Discharges of sewage, industrial wastes, or other wastes into state ground waters from the following activities or operations are not subject to the ground water permit requirements adopted under subsections (1) through (4):

- (a) discharges or activities at wells injecting fluids associated with oil and gas exploration and production regulated under the federal underground injection control program;
- (b) disposal by solid waste management systems licensed pursuant to 75-10-221;
- (c) individuals disposing of their own normal household wastes on their own property;
- (d) hazardous waste management facilities permitted pursuant to 75-10-406;
- (e) water injection wells, reserve pits, and produced water pits used in oil and gas field operations and approved pursuant to Title 82, chapter 11;
- (f) agricultural irrigation facilities;
- (g) storm water disposal or storm water detention facilities;
- (h) subsurface disposal systems for sanitary wastes serving individual residences;

- (i) in situ mining of uranium facilities controlled under Title 82, chapter 4, part 2;
- (j) mining operations subject to operating permits or exploration licenses in compliance with The Strip and Underground Mine Reclamation Act, Title 82, chapter 4, part 2, or the metal mine reclamation laws, Title 82, chapter 4, part 3;
- (k) projects reviewed under the provisions of the Montana Major Facility Siting Act, Title 75, chapter 20; or
- (l) a carbon dioxide injection well for which a permit has been issued pursuant to Title 82, chapter 11, part 1.

(6) Notwithstanding the provisions of 75-5-301(4), mixing zones for activities excluded from permit requirements under subsection (5) of this section must be established by the permitting agency for those activities in accordance with 75-5-301(4)(a) through (4)(c).

(7) Notwithstanding the exclusions set forth in subsection (5), any excluded source that the department determines may be causing or is likely to cause violations of ground water quality standards may be required to submit monitoring information pursuant to 75-5-602.

(8) The ~~board~~department may adopt rules identifying other activities or operations from which a discharge of sewage, industrial wastes, or other wastes into state ground waters is not subject to the ground water permit requirements adopted under subsections (1) through (4).

(9) The ~~board~~department may adopt rules authorizing general permits for categories of point source discharges. The rules may authorize discharge upon issuance of an individual authorization by the department or upon receipt of a notice of intent to be covered under the general permit."

Section 49. Section 75-5-402, MCA, is amended to read:

"75-5-402. Duties of department. The department shall:

- (1) issue, suspend, revoke, modify, or deny permits to discharge sewage, industrial wastes, or other wastes into state waters, consistently with rules made by the ~~board~~department;
- (2) examine plans and other information needed to determine whether a permit should be issued or suggest changes in plans as a condition to the issuance of a permit;
- (3) clearly specify in any permit any limitations imposed as to the volume, strength, and other

significant characteristics of the waste to be discharged; and

(4) establish as conditions to the issuance of permits for which a performance bond or other surety is filed under 75-5-405 certain reclamation requirements sufficient to prevent pollution of state waters during and after operation of the project or activity for which a permit is issued."

Section 50. Section 75-5-502, MCA, is amended to read:

"75-5-502. ~~Board-Department~~ authorized to accept loans and grants. The ~~board-department~~ may accept loans and grants from the federal government and other sources to carry out the provisions of this chapter."

Section 51. Section 75-5-514, MCA, is amended to read:

"75-5-514. ~~When board-department~~ to establish rates and collect charges. (1) In the event a municipality or other entity operating sewage systems fails, neglects, or refuses when required by the department to adopt the system of charges and rates authorized by 75-5-511, the ~~board-department~~ may adopt a system of charges and rates as provided for in 75-5-511(1) and collect, administer, and apply such revenues for the purposes of 75-5-512.

(2) In lieu of proceeding in the manner set forth in subsection (1) of this section, the department may institute proceedings at law or in equity to enforce compliance with or restrain violations of 75-5-511 through 75-5-513."

Section 52. Section 75-5-515, MCA, is amended to read:

"75-5-515. Determination of costs payable by users. In determining the amount of treatment works costs to be paid by recipients of treatment works services, the municipality or other entity operating sewage systems or, if applicable, the ~~board-department~~ shall consider the strength, volume, types, and delivery flow rate characteristics of the waste; the nature, location, and type of treatment works; the receiving waters; and ~~such~~ other factors ~~as~~ deemed necessary."

Section 53. Section 75-5-516, MCA, is amended to read:

"75-5-516. Fees authorized for recovery -- process -- rulemaking. (1) Except as provided in subsections (12) and (13), the ~~board~~department shall by rule prescribe fees ~~to be assessed by the department~~ ~~that are~~ sufficient to cover the ~~board's and~~ department's documented costs, both direct and indirect, of:

- (a) reviewing and acting upon an application for a permit, permit modification, permit renewal, certificate, license, or other authorization required by rule under 75-5-201 or 75-5-401;
- (b) reviewing and acting upon a petition for a degradation allowance under 75-5-303;
- (c) reviewing and acting upon an application for a permit, certificate, license, or other authorization for which an exclusion is provided by rule from the permitting requirements established under 75-5-401;
- (d) enforcing the terms and conditions of a permit or authorization identified in subsections (1)(a) through (1)(c). If the permit or authorization is not issued, the department shall return this portion of any application fee to the applicant.
- (e) conducting compliance inspections and monitoring effluent and ambient water quality; and
- (f) preparing water quality rules or guidance documents.

(2) Except as provided in subsection (12), the rules promulgated ~~by the board~~ under this section must include:

(a) a fee on all applications for permits or authorizations, as identified in subsections (1)(a) through (1)(c), that recovers to the extent permitted by this subsection (2) the department's cost of reviewing and acting upon the applications. This fee may not be more than \$5,000 per discharge point for an application addressed under subsection (1), except that an application with multiple discharge points may be assessed a lower fee for those points according to ~~board~~-rule.

(b) an annual fee to be assessed according to the volume and concentration of waste discharged into state waters. The annual fee may not be more than \$3,000 per million gallons discharged per day on an annual average for any activity under permit or authorization, as described in subsection (1), except that:

(i) a permit or authorization with multiple discharge points may be assessed a lower fee for those points according to ~~board~~-rule; and

(ii) a facility that consistently discharges effluent at less than or equal to one-half of its effluent limitations and that is in compliance with other permit requirements, using the previous calendar year's discharge data, is entitled to a 25% reduction in its annual permit fee. Proportionate reductions of up to 25% of

the permit fee may be given to facilities that consistently discharge effluent at levels between 50% and 100% of their effluent limitations. However, a new permittee is not eligible for a fee reduction in its first year of operation, and a permittee with a violation of any effluent limit during the previous calendar year is not eligible for a fee reduction for the following year.

(3) To the extent permitted under subsection (2)(b), the annual fee must be sufficient to pay the department's estimated cost of conducting all tasks described under subsection (1) after subtracting:

- (a) the fees collected under subsection (2)(a);
- (b) state general fund appropriations for functions administered under this chapter; and
- (c) federal grants for functions administered under this chapter.

(4) For purposes of subsection (3), the department's estimated cost of conducting the tasks described under subsection (1) is the amount authorized by the legislature for the department's water quality discharge permit programs.

(5) If the applicant or holder fails to pay a fee assessed under this section or rules adopted under this section within 90 days after the date established by rule for fee payment, the department may:

- (a) impose an additional assessment consisting of not more than 20% of the fee plus interest on the required fee computed as provided in 15-1-216; or
- (b) suspend the permit or exclusion. The department may lift the suspension at any time up to 1 year after the suspension occurs if the holder has paid all outstanding fees, including all penalties, assessments, and interest imposed under subsection (5)(a).

(6) Fees collected pursuant to this section must be deposited in an account in the special revenue fund type pursuant to 75-5-517.

(7) The department shall give written notice to each person assessed a fee under this section of the amount of fee that is assessed and the basis for the department's calculation of the fee. This notice must be issued at least 30 days prior to the due date for payment of the assessment.

(8) A holder of or an applicant for a permit, certificate, or license may appeal the department's fee assessment to the ~~board~~board within 20 days after receiving written notice of the ~~department's~~ fee determination under subsection (7). The appeal ~~to the board~~ must include a written statement detailing the reasons that the permitholder or applicant considers the department's fee assessment to be erroneous or

excessive.

(9) If part of the department's fee assessment is not in dispute in an appeal filed under subsection (8), the undisputed portion of the fee must be paid to the department upon written request of the department.

(10) The contested case provisions of the Montana Administrative Procedure Act, provided for in Title 2, chapter 4, part 6, apply to a hearing before the ~~board~~ board under this section.

(11) A municipality may raise rates to cover costs associated with the fees prescribed in this section for a public sewer system without the hearing required in 69-7-111.

(12) (a) The application fee assessed pursuant to this section for a suction dredge, as described in 82-4-310(2), may not be more than:

- (i) \$25 if it is owned and operated by a resident of this state; or
- (ii) \$100 if it is owned and operated by a nonresident of this state.

(b) The annual fee assessed pursuant to this section for a suction dredge, as described in 82-4-310(2), may not be more than:

- (i) \$25 if it is owned and operated by a resident of this state; or
- (ii) \$100 if it is owned and operated by a nonresident of this state.

(13) A county, an incorporated city or town, or a conservation district formed pursuant to Title 76, chapter 15, is not subject to fees for authorizations pursuant to 75-5-318 or certifications related to section 401 of the federal Clean Water Act, 33 U.S.C. 1341."

Section 54. Section 75-5-802, MCA, is amended to read:

"75-5-802. Permitting -- concentrated animal feeding operation. (1) For the purpose of permitting concentrated animal feeding operations, the ~~board~~ department shall adopt, by reference, the federal regulations and definitions contained in 40 CFR, parts 122.23 and 412.

(2) Subject to the provisions of subsection (3), concentrated animal feeding operations that meet the requirements of 40 CFR, part 412, must be authorized by the department under a general permit.

(3) If, upon review of an application for a general permit authorization for a concentrated animal feeding operation production area, the department discovers site-specific information that indicates that a general permit authorization is not sufficiently protective of water quality, the department shall require an

individual permit."

Section 55. Section 75-6-104, MCA, is amended to read:

"75-6-104. Duties of department. (1) The department has general supervision over all state waters that are directly or indirectly being used by a person for a public water supply system, for domestic purposes, or as a source of ice.

(2) The department shall, subject to the provisions of 75-6-116 and as provided in 75-6-131, adopt rules and standards concerning:

- (a) maximum contaminant levels for waters that are or will be used for a public water supply system;
- (b) fees, as described in 75-6-108, for services rendered by the department;
- (c) monitoring, recordkeeping, and reporting by persons who own or operate public water supply systems;
- (d) requiring public notice to all users of a public water supply system when a person has been granted a variance or exemption or is in violation of this part or a rule or order issued pursuant to this part;
- (e) the siting, construction, operation, and modification of a public water supply system or public sewage system, including requirements to remedy:
 - (i) defects in the design, operation, or maintenance of a public water supply system or public sewage system in order to prevent or correct introduction of contamination into water used for a public water supply system, for domestic purposes, or as a source of ice;
 - (ii) fecal contamination in water used by a public water supply system; or
 - (iii) failure or malfunction of the sources, treatment, storage, or distribution portion of a public water supply system in order to prevent or correct introduction of contamination into water used for a public water supply system, for domestic purposes, or as a source of ice;
- (f) the review of the technical, managerial, and financial capacity of a proposed public water supply system or public sewage system, as necessary to ensure the capability of the system to meet the requirements of this part;
- (g) the collection and analysis of samples of water used for drinking or domestic purposes;
- (h) the issuance of variances and exemptions as authorized by the federal Safe Drinking Water Act

and this part:

- (i) administrative enforcement procedures and administrative penalties authorized under this part;
 - (j) standards and requirements for the review and approval of programs that may be voluntarily submitted by suppliers of public water supply systems to prevent water supply contamination from a cross-connection, including provisions to exempt cross-connections from the standards and requirements if all connected systems are department-approved public water supply systems;
 - (k) (i) allowable uses of reclaimed wastewater and classification of those uses;
 - (ii) treatment, monitoring, recordkeeping, and reporting standards and requirements tailored to each classification that must be met by the public sewage system to protect the uses of the reclaimed wastewater and any receiving water;
 - (iii) prohibition of reclaimed wastewater uses that are not allowable under subsection (2)(k)(i) or for which the reclaimed wastewater has not been treated in compliance with rules adopted under subsection (2)(k)(ii); and
 - (iv) a requirement that an applicant who proposes to use reclaimed wastewater pursuant to this subsection (2)(k) has obtained any necessary authorizations required under Title 85 from the department of natural resources and conservation; and
 - (l) any other requirement necessary for the protection of public health as described in this part.
- (3) Department rules must provide for the following:
- (a) except as provided in 75-6-131, a water supply or water distribution facility reviewed and approved by the department is not subject to changes in department design and construction criteria for a period of 36 months after written approval of the facility is issued by the department;
 - (b) except for facilities subject to permit requirements under Title 75, chapter 5, part 4, and except as provided under rules adopted pursuant to 75-6-131, a system of water supply, drainage, wastewater, or sewage reviewed and approved under this section is not subject to changes in department design or construction criteria for a period of 36 months after written approval is issued by the department;
 - (c) plans and specifications for a portion of a facility or system subject to a 36-month limit on criteria changes pursuant to subsections (3)(a) and (3)(b) but not constructed within the 36-month timeframe must be resubmitted for department review and approval before construction of that portion of the facility;

(d) the provisions of this subsection (3) may not limit an applicant's ability to alter a proposed project that is otherwise in conformance with applicable laws, rules, standards, and criteria.

(4) The department or the board may issue orders necessary to fully implement the provisions of this part.

(5) The department shall:

(1)(a) upon its own initiative or complaint to the department, to the mayor or health officer of a municipality, or to the managing board or officer of a public institution, make an investigation of alleged pollution of a water supply system and, if required, prohibit the continuance of the pollution by ordering removal of the cause of pollution;

(2)(b) have waters examined to determine their quality and the possibility that they may endanger public health;

(3)(c) consult and advise authorities of cities and towns and persons having or about to construct systems for water supply, drainage, wastewater, and sewage as to the most appropriate source of water supply and the best method of ensuring its quality;

(4)(d) advise persons as to the best method of treating and disposing of their drainage, sewage, or wastewater with reference to the existing and future needs of other persons and to prevent pollution;

(5)(e) consult with persons engaged in or intending to engage in manufacturing or other business whose drainage or sewage may tend to pollute waters as to the best method of preventing pollution;

(6)(f) collect fees, as described in 75-6-108, for services and deposit the fees collected in the public drinking water special revenue fund established in 75-6-115;

(7)(g) establish and maintain experiment stations and conduct experiments to study the best methods of treating water, drainage, wastewater, and sewage to prevent pollution, including investigation of methods used in other states;

(8)(h) enter on premises at reasonable times to determine sources of pollution or danger to water supply systems and whether rules and standards of the ~~board~~ department are being obeyed;

(9)(i) enforce and administer the provisions of this part;

(10)(j) establish a plan for the provision of safe drinking water under emergency circumstances;

(11)(k) maintain an inventory of public water supply systems and establish a program for conducting

sanitary surveys; and

(12)(l) enter into agreements with local boards of health whenever appropriate for the performance of surveys and inspections under the provisions of this part."

Section 56. Section 75-6-105, MCA, is amended to read:

"75-6-105. Records required for wells drilled to supply water to public. Every person drilling a water well to furnish water for public consumption shall keep a complete record of the depth, thickness, and character of different strata and other information prescribed by the ~~board~~ department. Data ~~shall~~ must be furnished to the department on forms prescribed by it. These data are available to the public at all reasonable times."

Section 57. Section 75-6-106, MCA, is amended to read:

"75-6-106. Laboratory license required. A laboratory analysis of water taken from a public water supply system or any report of an analysis required by this part or a rule adopted under this part may not be accepted by the department ~~or board~~ unless the analysis or report is made by the department of public health and human services' laboratory or by a laboratory licensed by the department of public health and human services for water analysis purposes."

Section 58. Section 75-6-107, MCA, is amended to read:

"75-6-107. Variances and exemptions. (1) Except as provided in subsection (3), the department may grant a variance or exemption from the requirements of this part or the rules adopted under this part pursuant to the terms and conditions of the variance and exemption rules adopted by the ~~board~~ department.

(2) Except as provided in subsection (3), a variance or exemption granted pursuant to this section must be accompanied by a compliance plan specifying a time schedule for compliance.

(3) The department may grant for a period of up to 5 years a variance or exemption for a public water system to use bottled water to achieve compliance with a maximum contaminant level for nitrate. The variance or exemption must include the requirement that the owner of the public water system warn the public that the tap water is not potable and could pose a health risk if consumed by:

- (a) posting signs at locations required by the variance or exemption for the period granted by the variance or exemption; and
- (b) delivering annual notices as required by the variance or exemption to users of the public water system.
- (4) A person aggrieved by a decision of the department to grant, deny, revoke, or modify a variance or exemption may appeal the department's decision to the ~~board~~ board as provided in the Montana Administrative Procedure Act."

Section 59. Section 75-6-108, MCA, is amended to read:

"75-6-108. ~~Board~~ Department to prescribe fees -- opportunity for appeal. (1) The ~~board~~ department shall by rule prescribe fees to be assessed annually ~~by the department~~ on owners of public water supply systems to recover department costs in providing services under this part. The annual fee for a public water supply system is no more than \$2.25 for each service connection to the public water supply system for the biennium beginning July 1, 1991, and ending June 30, 1993, and thereafter is no more than \$2 for each service connection to the public water supply system, although the minimum fee for any system is \$100, except that the fee for a transient noncommunity water system is \$50.

(2) Public water supply systems in a municipality may raise the rates to recover costs associated with the fees prescribed in this section without the public hearing required in 69-7-111.

(3) The ~~board~~ department shall by rule prescribe fees ~~to be assessed by the department~~ on persons who submit plans and specifications for construction, alteration, or extension of a public water supply system or public sewage system. The fees must be commensurate with the cost to the department of reviewing the plans and specifications.

(4) Fees collected pursuant to this section must be deposited in the public drinking water special revenue fund established in 75-6-115.

(5) (a) The department shall notify the owner of a public water supply system in writing of the amount of the fee to be assessed and the basis for the assessment. The owner may appeal the fee assessment in writing ~~to the board~~ to the board within 20 days after receipt of the written notice.

(b) An appeal must be based on the allegation that the fee is erroneous or excessive. An appeal may

not be based only on the fee schedule adopted by the ~~board~~ department.

(c) If any part of the fee assessment is not appealed, it must be paid to the department upon receipt of the notice provided for in subsection (5)(a)."

Section 60. Section 75-6-112, MCA, is amended to read:

"75-6-112. Prohibited acts. A person may not:

- (1) commence or continue construction, alteration, extension, or operation of a system of water supply or water distribution that is intended to be used as a public water supply system or a system that is intended to be used as a public sewage system before the person submits to the department necessary maps, plans, and specifications for its review and the department approves those maps, plans, and specifications;
- (2) operate or maintain a public water supply system that exceeds a maximum contaminant level established by the ~~board~~-department unless the person has been granted or has an application pending for a variance or exemption pursuant to this part;
- (3) violate any provision of this part or a rule adopted under this part; or
- (4) violate any condition or requirement of an approval issued pursuant to this part."

Section 61. Section 75-6-116, MCA, is amended to read:

"75-6-116. State regulations no more stringent than federal regulations or guidelines. (1) After April 14, 1995, except as provided in subsections (2) through (5) or unless required by state law, the ~~board~~ department may not adopt a rule to implement this chapter that is more stringent than the comparable federal regulations or guidelines that address the same circumstances. The ~~board~~-department may incorporate by reference comparable federal regulations or guidelines.

(2) The ~~board~~-department may adopt a rule to implement this chapter that is more stringent than comparable federal regulations or guidelines only if the ~~board~~-department makes a written finding after a public hearing and public comment and based on evidence in the record that:

- (a) the proposed state standard or requirement protects public health or the environment of the state; and
- (b) the state standard or requirement to be imposed can mitigate harm to the public health or

environment and is achievable under current technology.

(3) The written finding must reference information and peer-reviewed scientific studies contained in the record that forms the basis for the ~~board's~~ department's conclusion. The written finding must also include information from the hearing record regarding the costs to the regulated community that are directly attributable to the proposed state standard or requirement.

(4) (a) A person affected by a rule of the board of environmental review adopted after January 1, 1990, and before April 14, 1995, that that person believes to be more stringent than comparable federal regulations or guidelines may petition the ~~board~~ department to review the rule. If the ~~board~~ department determines that the rule is more stringent than comparable federal regulations or guidelines, the ~~board~~ department shall comply with this section by either revising the rule to conform to the federal regulations or guidelines or by making the written finding, as provided under subsection (2), within a reasonable period of time, not to exceed 12 months after receiving the petition. A petition under this section does not relieve the petitioner of the duty to comply with the challenged rule. The ~~board~~ department may charge a petition filing fee in an amount not to exceed \$250.

(b) A person may also petition the ~~board~~ department for a rule review under subsection (4)(a) if the ~~board~~ board of environmental review or the department adopts a rule after January 1, 1990, in an area in which no federal regulations or guidelines existed and the federal government subsequently establishes comparable regulations or guidelines that are less stringent than the previously adopted ~~board~~ rule.

(5) This section does not apply to a rule adopted under the emergency rulemaking provisions of 2-4-303(1)."

Section 62. Section 75-6-121, MCA, is amended to read:

"75-6-121. Delegation of review of small public water and sewer construction. (1) If a local government requests a delegation and the appropriate division of the local government has established satisfactory review programs, the department may delegate to the division of local government review of:

- (a) small public water and sewer systems; and
- (b) extensions or alterations of existing public water and sewer systems that involve 50 or fewer connections.

(2) The ~~board~~department may adopt rules regarding the delegation of review authority to divisions of local government."

Section 63. Section 75-6-131, MCA, is amended to read:

"75-6-131. Rules for regional public water supply systems. The ~~board~~department shall adopt rules for approval of regional public water supply systems established by a regional water authority pursuant to Title 75, chapter 6, part 3. The rules must:

(1) include procedures for the construction of regional public water supply systems, including regulatory provisions for a series of project segments over the construction period of the project as contained in the final engineering report, as may be amended and approved by the United States bureau of reclamation, that addresses the:

(a) approval of design and construction standards that may not be subject to change for 72 months;

(b) issuance of deviations from design and construction standards to remain in effect for 72 months;

and

(c) approval of an individual regional water supply system's standard construction contract documents and provisions for amendments to those documents to remain in effect for the construction period of the project;

(2) implement plan and specification review periods or deviation request approval periods for storage, pumping, and distribution portions of a regional public water supply system of not more than 40 calendar days for the initial review by the department and not more than 20 working days for any subsequent reviews;

(3) avoid duplicate processes and regulations by coordinating and incorporating the review and approval process applicable to a regional public water supply system by the United States bureau of reclamation."

Section 64. Section 75-10-104, MCA, is amended to read:

"75-10-104. Duties of department. The department shall:

(1) prepare, adopt, and implement a state solid waste management and resource recovery plan as required by 75-10-111 and 75-10-807;

(2) ~~prepare~~adopt rules necessary for the implementation of this part ~~for submission to the board,~~

including but not limited to rules:

- (a) governing the submission of plans for a solid waste management system;
- (b) (i) establishing, for the purpose of determining the tonnage or volume-based solid waste management fee that a facility is subject to under 75-10-115(1)(c), methods for determining or estimating the amount of solid waste incinerated or disposed of at a facility; and
(ii) governing the application fee, flat annual license renewal fee, and tonnage or volume-based renewal fee for solid waste management systems;
- (c) establishing the license application fee that a facility is subject to under 75-10-115(1)(a);
- (d) establishing the flat annual license renewal fee that a facility is subject to under 75-10-115(1)(b);
- (e) establishing the tonnage or volume-based annual renewal fee that a facility is subject to under 75-10-115(1)(c); and
- (f) providing procedures for the quarterly collection of the solid waste management fee provided for in 75-10-204(6);
- (3) provide technical assistance to persons within the state for planning, designing, constructing, financing, and operating:
 - (a) a solid waste management system in order to ensure that the system conforms to the state plan;
 - (b) integrated waste management programs; and
 - (c) collection, disposal, reduction, and educational programs for household hazardous waste and small quantities of hazardous waste that are exempt from regulation under Title 75, chapter 10, part 4;
- (4) enforce and administer the provisions of this part;
- (5) approve plans for a proposed solid waste management system submitted by a local government;
- and
- (6) serve as a clearinghouse for information on waste reduction and reuse, recycling technology and markets, composting, and household hazardous waste disposal, including chemical compatibility."

Section 65. Section 75-10-112, MCA, is amended to read:

"75-10-112. Powers and duties of local government. A local government may:

- (1) plan, develop, and implement a solid waste management system consistent with the state's solid

waste management and resource recovery plan and propose modifications to the state's solid waste management and resource recovery plan;

(2) upon adoption of the state plan ~~by the board~~, pass an ordinance or resolution to exempt the local jurisdiction from complying with the state plan and subsequent rules implementing the state plan. The ordinance or resolution must include a means to provide solid waste disposal to the citizens of the jurisdiction as required in part 2 of this chapter.

(3) employ appropriate personnel to carry out the provisions of this part;

(4) purchase, rent, or execute leasing agreements for equipment and material necessary for the implementation of a solid waste management system;

(5) cooperate with and enter into agreements with any persons in order to implement an effective solid waste management system;

(6) receive gifts, grants, or donations or acquire by gift, deed, or purchase land necessary for the implementation of any provision of this part;

(7) enforce the rules of the department or a local board of health pertaining to solid waste management through the appropriate county attorney;

(8) apply for and utilize state, federal, or other available money for developing or operating a solid waste management system;

(9) borrow from any lending agency funds available for assistance in planning a solid waste management system;

(10) finance a solid waste management system by:

(a) subject to 15-10-420, fixing the assessment of a tax as authorized by state law; and

(b) as provided in 7-13-4108, fixing and collecting by ordinance or resolution the rates, rentals, and charges for a solid waste management system on system customers;

(11) sell on an installment sales contract or lease to a person all or a portion of a solid waste management system that the local government plans, designs, or constructs for the consideration and upon the terms established by the local governments and consistent with the loan requirements set forth in this part and rules adopted to implement this part;

(12) procure insurance against any loss in connection with property, assets, or activities;

(13) mortgage or otherwise encumber all or a portion of a solid waste management system when the local government finds that the action is necessary to implement the purposes of this part, as long as the action is consistent with the loan requirements set forth in this part and rules adopted to implement this part;

(14) hold or dispose of real property and, subject to agreements with lessors and lessees, develop or alter the property by making improvements or betterments for the purpose of enhancing the value and usefulness of the property;

(15) finance, design, construct, own, and operate a solid waste management system or contract for any or all of the powers authorized under this part;

(16) control the disposition of solid waste generated within the jurisdiction of the local government, except that, in the absence of an imminent threat to public health, safety, or the environment, a local government may not adopt a flow control or similar ordinance to require use of a specific transfer station or landfill for disposal of solid waste;

(17) enter into long-term contracts with local governments and private entities for:

(a) financing, designing, constructing, and operating a solid waste management system;

(b) marketing all raw or processed material recovered from solid waste;

(c) marketing energy products or byproducts resulting from processing or utilization of solid waste;

(18) finance an areawide solid waste management system through the use of any of the sources of revenue available to the implementation entity for public works projects, by the use of revenue bonds issued by the city or county, or by fees levied by a solid waste management district, whichever is appropriate;

(19) enter into interlocal agreements in order to achieve and implement the powers enumerated in this part;

(20) regulate the siting and operation of container sites."

Section 66. Section 75-10-115, MCA, is amended to read:

"75-10-115. Solid waste management fee. (1) The department may ~~prepare-adopt~~ prepare-adopt rules for adoption ~~by the board~~, pursuant to 75-10-104 and ~~75-10-106~~, that set fees for the management and regulation of solid waste at facilities subject to regulation pursuant to part 2 of this chapter. Upon adoption ~~by the board~~, the department may collect the fees. These fees may include:

(a) a license application fee that reflects the cost of reviewing a new solid waste management system or a substantial change to an existing facility from the time an application is made until the license is issued or denied;

(b) a flat annual license renewal fee that reflects a minimal base fee related to the fixed costs of an annual inspection and license renewal. The initial annual fee year for a new facility commences on the date that the facility initially receives waste. The fee must be based upon the categorization of solid waste management systems into separate classes identified by the following criteria:

- (i) the quantity of solid waste received by the solid waste management system;
 - (ii) the nature of the solid waste received; and
 - (iii) the nature of the waste management occurring within the solid waste management system.
- (c) a tonnage or volume-based fee on solid waste disposal.

(2) All fees collected must be deposited in the solid waste management account provided for in 75-10-117."

Section 67. Section 75-10-221, MCA, is amended to read:

"75-10-221. License required -- application. (1) Except as provided in 75-10-214, a person may not dispose of solid waste or operate a solid waste management system without a license from the department.

(2) The department shall provide application forms for a license as provided in this part.

(3) The application must contain the name and business address of the applicant, the location of the proposed solid waste management system, a plan of operation and maintenance, and other information that the department may by rule require.

(4) The license provided for in this section is for a period not to exceed 12 months unless renewed by the department.

(5) The department may require submission of a new application if the department determines that the plan of operation, the management of the solid waste system, or the geological or ground water conditions have changed since the license was initially approved.

(6) In preparing rules ~~for board adoption~~ that establish fees for licenses and the review of applications pursuant to 75-10-104(2), the department shall consider the tonnage or volume of waste to be managed and

the size of the proposed solid waste management system. The fees adopted ~~by the board~~ must encourage reduction in the tonnage or volume of waste to be managed and cover the costs to the department of initially reviewing and annually licensing the solid waste management system."

Section 68. Section 75-11-505, MCA, is amended to read:

"75-11-505. Administrative rules -- underground storage tanks -- petroleum mixing zones. (1)

The department may adopt, amend, or repeal rules for the prevention and correction of leakage from underground storage tanks, including:

- (a) reporting by owners and operators;
 - (b) financial responsibility;
 - (c) release detection, prevention, and corrective action;
 - (d) procedures and standards for the issuance, nonissuance, renewal, nonrenewal, modification, revocation, suspension, and enforcement of permits authorizing the operation of underground storage tanks;
 - (e) standards for design, construction, installation, and closure;
 - (f) development of a schedule of annual fees, not to exceed \$108 for a tank over 1,100 gallons and not to exceed \$36 for a tank 1,100 gallons or less, for each tank, for tank registration to defray state and local costs of implementing an underground storage tank program. The department may prorate fees to cover periods not equal to 12 months in order to provide staggered scheduling of renewal dates.
 - (g) a system for assessment of administrative penalties, notice, and appeals under 75-11-525; and
 - (h) delegation of authority and funds to local agents for inspections and implementation. The delegation of authority to local agents must complement and may not duplicate existing authority for implementation of rules adopted by the department of justice that relate to underground storage tanks.
- (2) In accordance with 75-11-508, the department:
- (a) shall adopt rules governing the inclusion of a petroleum mixing zone, as defined in 75-11-503, in a corrective action plan; and
 - (b) may incorporate by reference rules adopted ~~by the board of environmental review~~ pursuant to 75-5-301 and 75-5-303 related to mixing zones for ground water."

Section 69. Section 75-11-508, MCA, is amended to read:

"75-11-508. Corrective action -- petroleum mixing zones. (1) A corrective action plan prepared pursuant to 75-11-309 may include the use of a petroleum mixing zone, as defined in 75-11-503, in conjunction with the final remediation and resolution of a petroleum release.

(2) If a petroleum mixing zone is included in a corrective action plan, it may be established only when:

- (a) all source material has been removed to the maximum extent practicable;
- (b) the extent of petroleum contamination has been defined;
- (c) natural breakdown or attenuation is occurring within the plume; and
- (d) no further corrective action is reasonably required at the site.

(3) The boundary of a petroleum mixing zone established in accordance with this section must be contained within the boundary of the property on which the petroleum release originated unless a recorded easement, a restrictive covenant, or another institutional control approved by the department on an adjoining property allows the petroleum mixing zone to extend onto the adjoining property.

(4) Monitoring of a petroleum mixing zone may not be required unless there is a unique, overriding, site-specific, impact-related reason to require monitoring.

(5) At the downgradient boundary of a petroleum mixing zone, the concentration of any petroleum constituent, including benzene, may not exceed a water quality standard adopted ~~by the board~~ pursuant to 75-5-301.

(6) If a petroleum mixing zone is established and maintained:

- (a) the petroleum release is considered ~~to be~~ resolved;
- (b) no further corrective action for the petroleum release is required; and
- (c) the department shall issue a no-further-action letter to the owner or operator stating that a petroleum mixing zone has been established for the release and describing any conditions required to maintain the petroleum mixing zone.

(7) A corrective action plan approved by the department pursuant to 75-11-309 may be amended to include a petroleum mixing zone in accordance with this section, including a corrective action plan approved prior to April 15, 2011."

Section 70. Section 75-20-105, MCA, is amended to read:

"75-20-105. Adoption of rules. The ~~board~~ department may adopt rules implementing the provisions of this chapter."

Section 71. Section 75-20-216, MCA, is amended to read:

"75-20-216. Study, evaluation, and report on proposed facility -- assistance by other agencies.

(1) After receipt of an application, the department shall within 30 days notify the applicant in writing that:

- (a) the application is in compliance and is accepted as complete; or
- (b) the application is not in compliance and shall list the deficiencies. Upon correction of these deficiencies and resubmission by the applicant, the department shall within 15 days notify the applicant in writing that the application is in compliance and is accepted as complete.

(2) Upon receipt of an application complying with 75-20-211 through 75-20-213, 75-20-215, and this section, the department shall:

(a) commence an evaluation of the proposed facility and its effects, considering all applicable criteria listed in 75-20-301, and shall issue a decision, opinion, order, certification, or permit as provided in subsection (3);

(b) use, to the extent that it considers applicable, valid and useful existing studies and reports submitted by the applicant or compiled by a state or federal agency; and

(c) if a modification of a proposed facility is needed as determined by the department, consult with the applicant. The proposed modification must be analyzed in the environmental review document prepared under Title 75, chapter 1, parts 1 through 3.

(3) Except as provided in 75-1-205(4), 75-1-208(4)(b), and 75-20-231, the department shall issue, within 9 months following the date of acceptance of an application, any decision, opinion, order, certification, or permit required under the laws, other than those contained in this chapter, administered by the department. A decision, opinion, order, certification, or permit, with or without conditions, must be made under those laws. Nevertheless, the department retains authority to make the determination required under 75-20-301(1)(c) or (3). The decision, opinion, order, certification, or permit must be used in the final site selection process. Prior to the issuance of a preliminary decision by the department and pursuant to rules adopted by the ~~board~~ department,

the department shall provide an opportunity for public review and comment.

(4) Except as provided in 75-1-205(4), 75-1-208(4)(b), and 75-20-231, within 9 months following acceptance of an application for a facility, the department shall issue a report that must contain the department's studies, evaluations, recommendations, customer fiscal impact analysis, if required pursuant to 69-2-216, and other pertinent documents resulting from its study and evaluation. An environmental impact statement or analysis prepared pursuant to the Montana Environmental Policy Act may be included in the department findings if compelling evidence indicates that adverse environmental impacts are likely to result due to the construction and operation of a proposed facility. If the application is for a combination of two or more facilities, the department shall issue its report within the greater of the lengths of time provided for in this subsection for either of the facilities.

(5) For projects subject to joint review by the department and a federal land management agency, the department's certification decision may be timed to correspond to the record of decision issued by the participating federal agency.

(6) The departments of transportation; fish, wildlife, and parks; natural resources and conservation; revenue; and public service regulation and the consumer counsel shall report to the department information relating to the impact of the proposed facility on each department's area of expertise. The department shall allocate funds obtained from filing fees to the departments making reports and to the office of consumer counsel to reimburse them for the costs of compiling information and issuing the required report."

Section 72. Section 75-20-406, MCA, is amended to read:

"75-20-406. Judicial review of ~~board~~ decisions. (1) A person aggrieved by the final decision of the ~~board~~ department or board on an application for a certificate may obtain judicial review of that decision by the filing of a petition in a state district court of competent jurisdiction. A challenge to the issuance of a certificate must be brought in the county in which the activity authorized by the certificate will occur. If an activity will occur in more than one county, the action may be brought in any of the counties in which the activity will occur.

(2) The judicial review procedure is the procedure for contested cases under the Montana Administrative Procedure Act.

(3) A judicial challenge to a certificate issued pursuant to this chapter by a party other than the

certificate holder or applicant must include the party to whom the certificate was issued as provided in this chapter unless otherwise agreed to by the certificate holder or applicant. All judicial challenges of certificates for projects with a project cost, as determined by the court, of more than \$1 million must have precedence over any civil cause of a different nature pending in that court. If the court determines that the challenge was without merit or was for an improper purpose, such as to harass, to cause unnecessary delay, or to impose needless or increased cost in litigation, the court may award attorney fees and costs incurred in defending the action."

Section 73. Section 75-20-407, MCA, is amended to read:

"75-20-407. Jurisdiction of courts restricted. Except as expressly set forth in 75-20-401, 75-20-406, and 75-20-408, no court of this state has jurisdiction to hear or determine any issue, case, or controversy concerning any matter which was or could have been determined in a proceeding before the ~~board~~board or department under this chapter or to stop or delay the construction, operation, or maintenance of a facility, except to enforce compliance with this chapter or the provisions of a certificate issued ~~hereunder~~ pursuant to 75-20-404 and 75-20-405 or 75-20-408."

Section 74. Section 75-20-1001, MCA, is amended to read:

"75-20-1001. Geothermal exploration -- notification of department. The ~~board~~department shall adopt rules requiring every person who proposes to gather geological data by boring of test holes or other underground exploration, investigation, or experimentation related to the possible future development of a facility employing geothermal resources to comply with the following requirements:

- (1) notify the department of the proposed action;
 - (2) submit to the department a description of the area involved;
 - (3) submit to the department a statement of the proposed activities to be conducted and the methods to be utilized;
 - (4) submit to the department geological data reports at such times as may be required by the rules;
- and
- (5) submit such other information as the ~~board~~department may require in the rules."

Section 75. Section 75-20-1203, MCA, is amended to read:

"75-20-1203. Additional requirements for issuance of a certificate for the siting of a nuclear facility. (1) The ~~board~~department may not issue a certificate to construct a nuclear facility unless it finds that:

(a) no legal limits exist regarding the rights of a person or group of persons to bring suit for and recover full and just compensation from the designers, manufacturers, distributors, owners, ~~and/or or~~ operators of a nuclear facility for damages resulting from the existence or operation of the facility; and further, that no legal limits exist regarding the total compensation ~~which~~that may be required from the designers, manufacturers, distributors, owners, ~~and/or or~~ operators of a nuclear facility for damages resulting from the existence or operation of ~~such~~the facility;

(b) the effectiveness of all safety systems, including but not limited to the emergency core cooling systems, of ~~such~~the nuclear facility has been demonstrated, to the satisfaction of the ~~board~~department, by the comprehensive laboratory testing of substantially similar physical systems in actual operation;

(c) the radioactive materials from ~~such~~the nuclear facilities can be contained with no reasonable chance, as determined by the ~~board~~department, of intentional or unintentional escape or diversion of ~~such~~radioactive materials into the natural environment in ~~such~~a manner ~~as to cause~~that causes substantial or long-term harm or hazard to present or future generations due to imperfect storage technologies, earthquakes or other acts of God, theft, sabotage, acts of war or other social instabilities, or whatever other causes the ~~board~~department may ~~deem to be~~consider reasonably possible, at any time during which ~~such~~the materials remain a radiological hazard; and

(d) the owner of ~~such~~the nuclear facility has posted with the ~~board~~department a bond totaling not less than 30% of the total capital cost of the facility, as estimated by the ~~board~~department, to pay for the decommissioning of the facility and the decontamination of any area contaminated with radioactive materials due to the existence or operation of the facility in the event the owner fails to pay the full costs of ~~such~~the decommissioning and decontamination. Excess bond, if any, ~~shall~~must be refunded to the owner upon demonstration, to the satisfaction of the ~~board~~department, that the site and environs of the facility pose no radiological danger to present or future generations and that whatever other conditions the ~~board~~department may ~~deem~~consider reasonable ~~have been~~are met.

(2) Nothing in this section ~~shall~~may be construed as relieving the owner of a nuclear facility from full

financial responsibility for the decommissioning of ~~such~~the facility and decontamination of any area contaminated with radioactive materials as a result of the existence or operation of ~~such~~the facility at any time during which such materials remain a radiological hazard."

Section 76. Section 75-20-1205, MCA, is amended to read:

"75-20-1205. Emergency approval authority invalid for nuclear facilities. Notwithstanding the provisions of 75-20-304(2) and (3), the ~~board~~department may not waive compliance with any of the provisions of 75-20-201 and 75-20-203 or this part relating to certification of a nuclear facility."

Section 77. Section 76-3-622, MCA, is amended to read:

"76-3-622. Water and sanitation information to accompany preliminary plat. (1) Except as provided in subsection (2), the subdivider shall submit to the governing body or to the agent or agency designated by the governing body the information listed in this section for proposed subdivisions that will include new water supply or wastewater facilities. The information must include:

- (a) a vicinity map or plan that shows:
 - (i) the location, within 100 feet outside of the exterior property line of the subdivision and on the proposed lots, of:
 - (A) flood plains;
 - (B) surface water features;
 - (C) springs;
 - (D) irrigation ditches;
 - (E) existing, previously approved, and, for parcels less than 20 acres, proposed water wells and wastewater treatment systems;
 - (F) for parcels less than 20 acres, mixing zones identified as provided in subsection (1)(g); and
 - (G) the representative drainfield site used for the soil profile description as required under subsection (1)(d); and
 - (ii) the location, within 500 feet outside of the exterior property line of the subdivision, of public water and sewer facilities;

(b) a description of the proposed subdivision's water supply systems, storm water systems, solid waste disposal systems, and wastewater treatment systems, including:

(i) whether the water supply and wastewater treatment systems are individual, shared, multiple user, or public as those systems are defined in rules published by the department of environmental quality; and

(ii) if the water supply and wastewater treatment systems are shared, multiple user, or public, a statement of whether the systems will be public utilities as defined in 69-3-101 and subject to the jurisdiction of the public service commission or exempt from public service commission jurisdiction and, if exempt, an explanation for the exemption;

(c) a drawing of the conceptual lot layout at a scale no smaller than 1 inch equal to 200 feet that shows all information required for a lot layout document in rules adopted by the department of environmental quality pursuant to 76-4-104;

(d) evidence of suitability for new onsite wastewater treatment systems that, at a minimum, includes:

(i) a soil profile description from a representative drainfield site identified on the vicinity map, as provided in subsection (1)(a)(i)(G), that complies with standards published by the department of environmental quality;

(ii) demonstration that the soil profile contains a minimum of 4 feet of vertical separation distance between the bottom of the permeable surface of the proposed wastewater treatment system and a limiting layer; and

(iii) in cases in which the soil profile or other information indicates that ground water is within 7 feet of the natural ground surface, evidence that the ground water will not exceed the minimum vertical separation distance provided in subsection (1)(d)(ii);

(e) for new water supply systems, unless cisterns are proposed, evidence of adequate water availability:

(i) obtained from well logs or testing of onsite or nearby wells;

(ii) obtained from information contained in published hydrogeological reports; or

(iii) as otherwise specified by rules adopted by the department of environmental quality pursuant to 76-4-104;

(f) evidence of sufficient water quality in accordance with rules adopted by the department of

environmental quality pursuant to 76-4-104;

(g) a preliminary analysis of potential impacts to ground water quality from new wastewater treatment systems, using as guidance rules adopted ~~by the board of environmental review~~ pursuant to 75-5-301 and 75-5-303 related to standard mixing zones for ground water, source specific mixing zones, and nonsignificant changes in water quality. The preliminary analysis may be based on currently available information and must consider the effects of overlapping mixing zones from proposed and existing wastewater treatment systems within and directly adjacent to the subdivision. Instead of performing the preliminary analysis required under this subsection (1)(g), the subdivider may perform a complete nondegradation analysis in the same manner as is required for an application that is reviewed under Title 76, chapter 4.

(2) A subdivider whose land division is excluded from review under 76-4-125(1) is not required to submit the information required in this section.

(3) A governing body may not, through adoption of regulations, require water and sanitation information in addition to the information required under this section unless the governing body complies with the procedures provided in 76-3-511."

Section 78. Section 76-4-1001, MCA, is amended to read:

"76-4-1001. Penalty factors. (1) In determining the amount of an administrative or civil penalty to which subsection (4) applies, the department of environmental quality or the district court, as appropriate, shall take into account the following factors:

- (a) the nature, extent, and gravity of the violation;
- (b) the circumstances of the violation;
- (c) the violator's prior history of any violation, which:
 - (i) must be a violation of a requirement under the authority of the same chapter and part as the violation for which the penalty is being assessed;
 - (ii) must be documented in an administrative order or a judicial order or judgment issued within 3 years prior to the date of the occurrence of the violation for which the penalty is being assessed; and
 - (iii) may not, at the time that the penalty is being assessed, be undergoing or subject to administrative appeal or judicial review;

- (d) the economic benefit or savings resulting from the violator's action;
 - (e) the violator's good faith and cooperation;
 - (f) the amounts voluntarily expended by the violator, beyond what is required by law or order, to address or mitigate the violation or impacts of the violation; and
 - (g) other matters that justice may require.
- (2) After the amount of a penalty is determined under subsection (1), the department of environmental quality or the district court, as appropriate, may consider the violator's financial ability to pay the penalty and may institute a payment schedule or suspend all or a portion of the penalty.
- (3) The department of environmental quality may accept a supplemental environmental project as mitigation for a portion of the penalty. For purposes of this section, a "supplemental environmental project" is an environmentally beneficial project that a violator agrees to undertake in settlement of an enforcement action but which the violator is not otherwise legally required to perform.
- (4) This section applies to penalties assessed by the department of environmental quality or the district court under Title 75, chapters 2, 5, 6, 11, and 20; Title 75, chapter 10, parts 2, 4, 5, and 12; and Title 76, chapter 4.
- (5) ~~The board of environmental review and the~~ department of environmental quality may, ~~for the statutes listed in subsection (4) for which each has rulemaking authority,~~ adopt rules to implement this section."

Section 79. Section 80-15-105, MCA, is amended to read:

"80-15-105. Rulemaking. (1) ~~The board~~ department of environmental quality, subject to the provisions of 80-15-110, shall adopt rules for the administration of this chapter for which the ~~board and the~~ department of environmental quality ~~have~~ has responsibility. These rules must include but are not limited to:

- (a) standards and interim numerical standards for agricultural chemicals in ground water as authorized by 80-15-201;
- (b) procedures for ground water monitoring as authorized by 80-15-202 and 80-15-203;
- (c) field and laboratory operational quality assurance, quality control, and confirmatory procedures that are authorized by 80-15-107, 80-15-202, and 80-15-203 and that may include, through adoption by reference, procedures that have been established or approved by EPA for quality assurance and quality

control;

(d) standards for maintaining the confidentiality of data and information declared confidential by EPA and the confidentiality of chemical registrant data and information protected from disclosure by federal or state law as required by 80-15-108; and

(e) administrative civil penalties as authorized by 80-15-412.

(2) The department shall adopt rules necessary to carry out its responsibilities under this chapter.

These rules must include but are not limited to:

(a) procedures for ground water monitoring as authorized by 80-15-202 and 80-15-203;

(b) the content and procedures for development of agricultural chemical ground water management plans, including the content of best management practices and best management plans, procedures for obtaining comments from the department of environmental quality on the plans, and the adoption of completed plans and plan modifications as authorized by 80-15-211 through 80-15-218;

(c) standards for maintaining the confidentiality of data and information declared confidential by EPA and of chemical registrant data and information protected from disclosure by federal or state law as required by 80-15-108;

(d) field and laboratory operational quality assurance, quality control, and confirmatory procedures that are authorized by 80-15-107, 80-15-202, and 80-15-203 and that may include, through adoption by reference, procedures that have been established or approved by EPA for quality assurance and quality control;

(e) emergency procedures as authorized by 80-15-405;

(f) procedures for issuance of compliance orders as authorized by 80-15-403; and

(g) procedures for the assessment of administrative civil penalties as authorized by 80-15-412."

Section 80. Section 80-15-110, MCA, is amended to read:

"80-15-110. State regulations no more stringent than federal regulations or guidelines. (1) After April 14, 1995, except as provided in subsections (2) through (5) or unless required by state law, the ~~board~~ department of environmental quality may not adopt a rule to implement this chapter that is more stringent than the comparable federal regulations or guidelines that address the same circumstances. The ~~board~~ department

of environmental quality may incorporate by reference comparable federal regulations or guidelines.

(2) The ~~board~~ department of environmental quality may adopt a rule to implement this chapter that is more stringent than comparable federal regulations or guidelines only if ~~the board~~ it makes a written finding after a public hearing and public comment and based on evidence in the record that:

(a) the proposed state standard or requirement protects public health or the environment of the state; and

(b) the state standard or requirement to be imposed can mitigate harm to the public health or environment and is achievable under current technology.

(3) The written finding must reference information and peer-reviewed scientific studies contained in the record that forms the basis for the ~~board's~~ conclusion. The written finding must also include information from the hearing record regarding the costs to the regulated community that are directly attributable to the proposed state standard or requirement.

(4) (a) A person affected by a rule of the ~~board~~ board adopted after January 1, 1990, and before April 14, 1995, that that person believes to be more stringent than comparable federal regulations or guidelines may petition the ~~board~~ board to review the rule. If the ~~board~~ board determines that the rule is more stringent than comparable federal regulations or guidelines, ~~the board~~ the department shall comply with this section by either revising the rule to conform to the federal regulations or guidelines or by making the written finding, as provided under subsection (2), within a reasonable period of time, not to exceed 12 months after receiving the petition. A petition under this section does not relieve the petitioner of the duty to comply with the challenged rule. The ~~board~~ board may charge a petition filing fee in an amount not to exceed \$250.

(b) A person may also petition the ~~board~~ board for a rule review under subsection (4)(a) if the board ~~adopts~~ adopted a rule after January 1, 1990, and before [the effective date of this act] in an area in which no federal regulations or guidelines existed and the federal government subsequently establishes comparable regulations or guidelines that are less stringent than the previously adopted board rule.

(5) This section does not apply to a rule adopted under the emergency rulemaking provisions of 2-4-303(1)."

Section 81. Section 80-15-201, MCA, is amended to read:

"80-15-201. Ground water standards. (1) The ~~board~~department of environmental quality shall adopt standards and, as applicable, interim numerical standards for agricultural chemicals in ground water. The standards must be the same as any promulgated or nonpromulgated federal standard established by EPA, although the ~~board~~department of environmental quality may determine, pursuant to the requirements of subsection (4), that an interim numerical standard different from either a promulgated or nonpromulgated federal standard is justified. Promulgated federal standards must receive preference. Except as provided in subsections (3) and (4), if more than one nonpromulgated federal standard exists for an agricultural chemical, the ~~board~~department of environmental quality must adopt the most recently established nonpromulgated federal standard.

(2) The ~~board~~department of environmental quality is not required to adopt a standard or interim numerical standard for each agricultural chemical registered in the state. The only standards and interim numerical standards required are for those agricultural chemicals:

- (a) that are addressed by promulgated and nonpromulgated federal standards;
- (b) the presence of which has been verified in ground water as provided in 80-15-202; or
- (c) that the department and the department of environmental quality predict may appear in ground water, in accordance with the procedures and determinations specified in 80-15-202 and 80-15-203.

(3) If a promulgated federal standard has not been adopted or a nonpromulgated federal standard has not been published for an agricultural chemical for which the ~~board~~department of environmental quality is required to establish a standard or interim numerical standard as specified in subsections (2)(b) and (2)(c), the department of environmental quality shall request EPA to establish a promulgated or nonpromulgated federal standard. If the department of environmental quality determines that EPA cannot comply with the request within 15 days, the ~~board~~department of environmental quality shall adopt an interim numerical standard, provided that the ~~board~~department of environmental quality shall review the interim numerical standard whenever EPA adopts a promulgated federal standard or publishes a nonpromulgated federal standard for the agricultural chemical in question.

(4) The ~~board~~department of environmental quality may adopt an interim numerical standard that is different from either a promulgated or nonpromulgated federal standard if there is significant new and relevant technical information available that is scientifically valid. The ~~board~~department of environmental quality shall

review the interim numerical standard when EPA establishes or revises the promulgated or nonpromulgated federal standard for the agricultural chemical in question.

(5) The ~~board~~ department of environmental quality shall consider the following in adopting any interim numerical standard under either subsection (3) or (4):

(a) effects on a person weighing 70 kilograms and drinking 2 liters of water per day over a lifetime; and

(b) EPA's conclusions regarding the no observable effect level, including the margin of safety identified by EPA, when scientific data indicates oncogenic potential for the agricultural chemical and EPA has determined that a numerical risk assessment is not justified, is inappropriate, or does not serve as the primary toxicological basis for regulation.

(6) Nothing in this section may interfere with the ~~board's~~ department of environmental quality's responsibility to adopt rules and standards under Title 75, chapter 6."

Section 82. Section 82-4-102, MCA, is amended to read:

"82-4-102. Intent -- findings -- policy and purpose. (1) The legislature, mindful of its constitutional obligations under Article II, section 3, and Article IX of the Montana constitution, has enacted The Strip and Underground Mine Siting Act. It is the legislature's intent that the requirements of this part provide adequate remedies for the protection of the environmental life support system from degradation and provide adequate remedies to prevent unreasonable depletion and degradation of natural resources.

(2) It is the policy of this state to provide adequate remedies for the protection of the environmental life support system from degradation and provide adequate remedies to prevent unreasonable depletion and degradation of natural resources.

(3) It is the purpose of this part:

(a) to vest in the department the authority to adopt rules and to review new strip-mine and new underground-mine site locations and reclamation plans and either approve or disapprove those locations and plans and to exercise general administration and enforcement of this part;

~~(b) to vest in the board the authority to adopt rules;~~

~~(e)(b)~~ to satisfy the requirement of Article IX, section 2, of the constitution of this state that all lands

disturbed by the taking of natural resources be reclaimed; and

~~(d)~~(c) to ensure that adequate information is available on areas proposed for strip mining or underground mining so that mining and reclamation plans may be properly formulated to accommodate areas that are suitable for strip mining or underground mining.

(4) This part is an exercise of the general police power to provide for the health and welfare of the people."

Section 83. Section 82-4-112, MCA, is amended to read:

"82-4-112. Administration. (1) The department shall:

(a) adopt, after an opportunity for a hearing, general rules pertaining to new strip mines and to new underground mines and preparatory work to accomplish the purposes of this part, rules regarding filing of reports, issuance of permits, and other matters of procedure and administration;

~~(a)~~(b) exercise general supervision, administration, and enforcement of this part and all rules and orders adopted under this part;

~~(b)~~(c) issue orders requiring operators to adopt remedial measures necessary to comply with this part and rules adopted under this part;

~~(c)~~(d) order the suspension of any permit for failure to comply with this part, any rule adopted under this part, or a permit issued pursuant to this part;

~~(d)~~(e) issue an order revoking a permit when the requirements set forth by a notice of violation, order of suspension, or order requiring remedial measures have not been complied with according to the terms in the notice or order;

~~(e)~~(f) order the halting of any operation that is started without first having obtained a permit as required by this part;

~~(f)~~(g) conduct investigations and inspections necessary to ensure compliance with this part; and

~~(g)~~(h) encourage and conduct investigations, research, experiments, and demonstrations and collect and disseminate information relating to new strip mines, new underground mines, and reclamation of lands and waters affected by preparatory work.

(2) The ~~board~~board shall conduct hearings under this part."

Section 84. Section 82-4-123, MCA, is amended to read:

"82-4-123. Permit fee and surety bond. A fee of \$50 shall be paid before the mine-site location permit required in this part may be issued. The operator shall also file with the department a bond payable to the state of Montana with surety satisfactory to the department in the penal sum to be determined by the department of not less than \$200 or more than \$10,000 for each acre or fraction thereof of the area of land to be disturbed by preparatory work, with a minimum bond of \$5,000, conditioned upon the faithful performance of the requirements set forth in this part and of the rules of the ~~board~~ department. In determining the amount of the bond within the above limits, the department shall take into consideration the character and nature of the surface and subsurface disturbances, the future suitable use of the land involved, and the cost of removing or burying facilities, subsidence stabilization, water controls, backfilling, grading, topsoiling, and reclamation to be required. Notwithstanding the above limits, the bond may not be less than the total estimated cost to the state of completing the work described in the reclamation plan."

Section 85. Section 82-4-129, MCA, is amended to read:

"82-4-129. Noncompliance -- suspension of permits. (1) If any of the requirements of this part or rules or orders of the department have not been complied with within the time limits set by the department or by this part, the department shall serve a notice of noncompliance on the operator or, when necessary, the director of the department shall order the suspension of a permit. The notice or order must be handed to the operator in person or served by certified mail addressed to the permanent address shown on the application for a permit. The notice of noncompliance or order of suspension must specify in what respects the operator has failed to comply with this part or the rules or orders of the department and the board ~~and the board~~. If the operator has not complied with the requirement set forth in the notice of noncompliance or order of suspension within time limits set in the notice or order, the permit may be revoked by order of the ~~board~~ board and the performance bond forfeited to the department.

(2) Any additional strip-mining or underground-mining or mine-site location permits held by an operator whose mine-site location permit has been revoked must be suspended, and the operator is not eligible to receive another permit or to have the suspended permits reinstated until the operator has complied with all

the requirements of this part with respect to previous permits issued to the operator. An operator who has forfeited a bond is not eligible to receive another permit unless the land for which the bond was forfeited has been reclaimed without cost to the state or the operator has paid into the reclamation account a sum together with the value of the bond the department finds adequate to reclaim the lands. The department may not issue any additional permits to an operator who has repeatedly been in noncompliance or violation of this part."

Section 86. Section 82-4-205, MCA, is amended to read:

"82-4-205. Administration by department and board and board. (1) The department shall adopt, after an opportunity for a hearing, general rules pertaining to strip mining and to underground mining to accomplish the purposes of this part. The department may adopt rules with respect to filing of reports, issuance of permits, monitoring, and other matters of procedure and administration.

~~(1)~~(2) The department:

(a) shall exercise general supervision, administration, and enforcement of this part and all rules and orders adopted under this part;

(b) shall review for approval or disapproval all plans and specifications submitted by an operator for the method of operation, subsidence stabilization, water control, backfilling, grading, highwall reduction, and topsoiling and for the reclamation of the area of land affected by the operator's operation;

(c) shall issue orders requiring an operator to adopt the remedial measures necessary to comply with this part and rules adopted under this part;

(d) shall order the suspension of any permit for failure to comply with this part or a rule adopted under this part;

(e) shall issue an order revoking a permit when the requirements set forth by a notice of violation, order of suspension, or order requiring remedial measures have not been complied with according to the terms in the notice or order;

(f) shall order the halting of any operation that is started without first having obtained a permit as required by this part or order the cessation of operations not in compliance with this part in accordance with 82-4-251;

(g) shall conduct public hearings required under this part or rules adopted ~~by the board~~ pursuant to

this part;

(h) shall conduct investigations and inspections necessary to ensure compliance with this part; and

~~(i)~~(i) may encourage and conduct investigations, research, experiments, and demonstrations and collect and disseminate information relating to strip mining and to underground mining and reclamation of lands and waters affected by strip mining and underground mining.

~~(2) The board shall conduct contested case hearings under this part.~~

(2) The board shall conduct contested case hearings under this part."

Section 87. Section 82-4-207, MCA, is amended to read:

"82-4-207. Rulemaking -- in situ coal gasification. (1) Within 1 year of October 1, 2011, and in accordance with subsection (3), the ~~board~~ department shall adopt rules necessary to regulate underground mining using in situ coal gasification.

(2) Unless required by this part, the ~~board~~ department may not adopt a rule to regulate in situ coal gasification that is more stringent than the comparable federal regulations or guidelines that address the same circumstances.

(3) The ~~board~~ department shall solicit, document, consider, and address comments from the board of oil and gas conservation provided for in 2-15-3303 in developing rules pursuant to subsection (1)."

Section 88. Section 82-4-223, MCA, is amended to read:

"82-4-223. Surety bond. (1) Before a permit may be issued, the operator shall file with the department a bond payable to the state of Montana with surety satisfactory to the department in an amount to be determined by the department of not less than \$200 for each acre or fraction of an acre of the area of land affected, with a minimum bond of \$10,000, conditioned upon the faithful performance of the requirements set forth in this part and of the rules of the ~~board~~ department. The operator may elect to deposit cash, negotiable bonds, or negotiable certificates of deposit of any bank organized or transacting business in the United States. The cash deposit or market value of these securities must be equal to or greater than the amount of the bond required for the bonded area. The level of bonding must be relative to the degree of disturbance projected by the original permit and the annual report. A political subdivision or agency of the state need not file a bond

unless required to do so by the department. The department shall adjust the amount of bond required if the cost of reclamation changes.

(2) In determining the amount of the bond, the department shall take into consideration the character and nature of the overburden, the future suitable use of the land involved, and the cost of backfilling, grading, highwall reduction, subsidence stabilization, water control, topsoiling, and reclamation to be required, but the bond may not be less than the total estimated cost to the state of completing the work described in the reclamation plan."

Section 89. Section 82-4-226, MCA, is amended to read:

"82-4-226. Prospecting permit. (1) Except as provided in subsection (7), prospecting by any person on land not included in a valid strip-mining or underground-mining permit is unlawful without possessing a valid prospecting permit issued by the department as provided in this section. A prospecting permit may not be issued until the person submits an application, the application is examined, amended if necessary, and approved by the department, and an adequate reclamation performance bond is posted, all of which prerequisites must be done in conformity with the requirements of this part.

(2) An application for a prospecting permit filed pursuant to subsection (1) must be made in writing, notarized, and submitted to the department upon forms prepared and furnished by it. The application must include among other things a prospecting map and a prospecting reclamation plan of substantially the same character as required for a surface-mining or underground-mining map and reclamation plan under this part. The department shall determine by rules the precise nature of the required prospecting map and reclamation plan. Any applicant who intends to prospect by means of core drilling shall specify the location and number of holes to be drilled, methods to be used in sealing aquifers, and other information that may be required by the department. The applicant shall state what types of prospecting and excavating techniques will be employed on the affected land. The application must also include any other or further information that the department may require.

(3) Before the department gives final approval to the prospecting permit application, the applicant shall file with the department a reclamation and revegetation bond in a form and in an amount as determined in the same manner for strip-mining or underground-mining reclamation and revegetation bonds under this part.

(4) In the event that the holder of a prospecting permit desires to strip mine or underground mine the area covered by the prospecting permit and has fulfilled all the requirements for a strip-mining or underground-mining permit, the department may permit the postponement of the reclamation of the acreage prospected if that acreage is incorporated into the complete reclamation plan submitted with the application for a strip-mining or underground-mining permit. Any land actually affected by prospecting or excavating under a prospecting permit and not covered by the strip-mining or underground-mining reclamation plan must be promptly reclaimed.

(5) The prospecting permit is valid for 1 year and is subject to renewal, suspension, and revocation in the same manner as strip-mining or underground-mining permits under this part.

(6) The holder of the prospecting permit shall file with the department the same progress reports, maps, and revegetation progress reports as are required of strip-mining or underground-mining operators under this part.

(7) (a) Prospecting that is not conducted in an area designated unsuitable for coal mining pursuant to 82-4-227 or 82-4-228, that is not conducted for the purpose of determining the location, quality, or quantity of a mineral deposit, and that does not remove more than 250 tons of coal is not subject to subsections (1) through (6). However, a person who conducts prospecting described in this subsection (7)(a) shall file with the department a notice of intent to prospect that contains the information required by the department before commencing prospecting operations. If this prospecting substantially disturbs the natural land surface, it must be conducted in accordance with the performance standards of the ~~board's~~department's rules regulating the conduct and reclamation of prospecting operations that remove coal. The department may inspect these prospecting and reclamation operations at any reasonable time.

(b) (i) Prospecting conducted to determine the location, quality, or quantity of coal outside an area designated unsuitable that is not included in a valid strip-mining or underground-mining permit, that does not substantially disturb the land surface, and that does not remove more than 250 tons of coal is not subject to subsections (1) and (2) but may not be conducted without a valid prospecting permit issued pursuant to subsection (8).

(ii) For purposes of this subsection (7)(b), the drilling of coal prospecting holes, the installation and use of associated disposal pits, and the installation of ground water monitoring wells does not constitute substantial

disturbance.

(8) (a) An application for a coal prospecting permit required by subsection (7)(b) must contain:

(i) the name, address, and telephone number of the person who seeks to prospect;

(ii) the name, address, and telephone number of the person's representative who will be present at and responsible for conducting the prospecting activities;

(iii) a narrative describing the proposed prospecting area or a map of the prospecting area at a scale of 1:24,000 or greater showing:

(A) the general location of drill holes and trenches;

(B) existing and proposed roads;

(C) occupied dwellings;

(D) topographic features;

(E) bodies of water; and

(F) pipelines;

(iv) a copy of the documents upon which the applicant bases its legal right to prospect, including documentation that the owners of the land affected have been notified and understand that the department will make investigations and inspections to ensure compliance;

(v) a statement of the period of intended prospecting; and

(vi) a description of the method of prospecting to be used and the practices that will be followed to protect the environment and reclaim disturbed areas, including plugging of prospecting holes, in accordance with rules adopted by the ~~board~~ department.

(b) Within 10 working days of receipt of an application, the department shall notify the applicant in writing as to whether the application is complete and preliminarily acceptable. If the department determines that the application is not complete or not preliminarily acceptable, the department shall include a detailed identification of information necessary to cure the deficiency.

(c) Within 5 working days of receipt of the applicant's response to the identified deficiencies, the department shall review the response and notify the person as to whether the application is complete and preliminarily acceptable. If the department determines the application is not complete or preliminarily acceptable, the department shall notify the person in writing and include a detailed identification of information

necessary to make the application complete and preliminarily acceptable.

(d) When the department determines that the application is complete and preliminarily acceptable, the department shall notify the applicant in writing. The notification must include the amount of bond that is required to be posted in order for the permit to be issued.

(e) Upon receipt of the department's determination of preliminary acceptability, the applicant shall place an advertisement in a newspaper of general circulation in the locality of the proposed prospecting. The notice must describe the application and a place in the locality where the public may examine the application and must notify the public that it may submit written comments by delivering or mailing them to the department within 10 days following publication of the notice.

(f) After close of the public comment period, the department shall notify the applicant as to whether the application is acceptable. The department shall issue the notification within 5 working days of the close of the comment period if no comments are received and within 10 working days if comments are received. In the notice of acceptability, the department shall notify the applicant of any adjustment in the amount of the bond.

(g) A permit issued pursuant to this subsection (8) is subject to subsections (3) through (6)."

Section 90. Section 82-4-231, MCA, is amended to read:

"82-4-231. Submission of and action on reclamation plan. (1) As rapidly, completely, and effectively as the most modern technology and the most advanced state of the art will allow, each operator granted a permit under this part shall reclaim and revegetate the land affected by the operation, except that underground tunnels, shafts, or other subsurface excavations need not be revegetated. Under the provisions of this part and rules adopted by the ~~board~~ department, an operator shall prepare and carry out a method of operation, a plan of grading, backfilling, highwall reduction, subsidence stabilization, water control, and topsoiling and a reclamation plan for the area of land affected by the operation. In developing a method of operation and plans of grading, backfilling, highwall reduction, subsidence stabilization, water control, topsoiling, and reclamation, all measures must be taken to eliminate damages to landowners and members of the public, their real and personal property, public roads, streams, and all other public property from soil erosion, subsidence, landslides, water pollution, and hazards dangerous to life and property.

(2) The reclamation plan must set forth in detail the manner in which the applicant intends to comply

with 82-4-232 through 82-4-234 and this section and the steps to be taken to comply with applicable air and water quality laws and rules and any applicable health and safety standards.

(3) The application for a permit or major revision of a permit, which must contain the reclamation plan, must be submitted to the department.

(4) The department shall determine whether the application is administratively complete. An application is administratively complete if it contains information addressing each application requirement in 82-4-222 and the rules implementing that section and all information necessary to initiate processing and public review. The department shall notify the applicant in writing of its determination no later than 90 days after submittal of the application. If the department determines that the application is not administratively complete, it shall specify in the notice those items that the application must address. The application is presumed administratively complete as to those requirements not specified in the notice.

(5) If the department determines that an environmental impact statement on the application is required, it shall notify the applicant in writing at the same time it gives the applicant notice pursuant to subsection (4).

(6) After the applicant receives notice that the application is administratively complete, the applicant shall publish notice of filing of the application once a week for 4 consecutive weeks in a newspaper of general circulation in the locality of the proposed operation. The department shall notify various local governmental bodies, planning agencies, sewage and water treatment authorities, and water companies in the locality in which the proposed mining will take place of the application and provide a reasonable time for them to submit written comments. Any person having an interest that is or may be adversely affected or the officer or head of any federal, state, or local governmental agency or authority may file written objections to the proposed initial or revised application for permit or major revision within 30 days of the applicant's published notice. If written objections are filed and an objector requests an informal conference, the department shall hold an informal conference in the locality of the proposed operation within 30 days of receipt of the request. The department shall notify the applicant and all parties to the informal conference of its decision and the reasons for its decision within 60 days of the informal conference. The department may arrange with the applicant upon request by any party to the administrative proceeding for access to the proposed mining area for the purpose of gathering information relevant to the proceeding.

(7) The filing of written objections or a request for an informal conference may not preclude the department from proceeding with its review of the application as specified in subsection (8).

(8) (a) The department shall review each administratively complete application and determine the acceptability of the application. During the review, the department may propose modifications to the application or delete areas from the application in accordance with the requirements of 82-4-227. A complete application is considered acceptable when the application is in compliance with all of the applicable requirements of this part and the regulatory program pursuant to this part.

(b) If the applicant significantly modifies the application after the application has been determined administratively complete in accordance with subsection (4), the department shall under this section either deny the application or conduct a new review, including an administrative completeness determination, public notice, and objection period.

(c) If an environmental impact statement is determined to be necessary prior to making a permit decision, the department shall complete and publish the final environmental impact statement at least 15 days prior to the date of issuance of the written findings pursuant to subsection (8)(f).

(d) Except as provided in 75-1-205(4) and 75-1-208(4)(b), within 120 days after it determines that an application is administratively complete, the department shall notify the applicant in writing whether the application is or is not acceptable. If the application is not acceptable, the department shall set forth the reasons why it is not acceptable, and it may propose modifications, delete areas, or reject the entire application. All items not specified as unacceptable in the department's notification are presumed to be acceptable. Except as provided in 75-1-208(4)(b), if the applicant revises the application in response to a notice of unacceptability, the department shall review the revised application and notify the applicant in writing within 120 days of the date of receipt whether the revised application is acceptable. If the revision constitutes a significant modification under subsection (8)(b), the department shall conduct a new review, beginning with an administrative completeness determination.

(e) When the application is determined to be acceptable, the department shall publish notice of its determination once a week for 2 consecutive weeks in a newspaper of general circulation in the locality of the proposed operation. Any person having an interest that is or may be adversely affected may file a written objection to the determination within 10 days of the department's last published notice. If a written objection is

filed and an objector requests an informal conference, the department shall hold an informal conference in the locality of the proposed operation within 20 days of receipt of the request. The department shall notify the applicant and all parties to the informal conference of its decision and the reasons for the decision within 10 days of the informal conference.

(f) Except as provided in 75-1-205(4) and 75-1-208(4)(b), the department shall prepare written findings granting or denying the permit or major revision application in whole or in part not later than 45 days from the date the application is determined acceptable. However, if lands subject to the federal lands program are included in the application for permit or major revision, the department shall prepare and submit written findings to the federal regulatory authority. If the department's decision is to grant the permit, the department shall issue the permit on the date of its written finding or, if any federal concurrence is necessary, on the date when the concurrence is obtained. If the application is denied, specific reasons for the denial must be set forth in the written notification to the applicant.

(g) If the department fails to act within the times specified in this subsection (8), it shall immediately ~~notify the board~~ notify the board in writing of its failure to comply and the reasons for the failure to comply.

(9) The applicant, a landowner, or any person with an interest that is or may be adversely affected by the department's permit decision may within 30 days of that decision submit a written notice requesting a hearing. The notice must contain the grounds upon which the requester contends that the decision is in error. The hearing must be started within 30 days of the request. For purposes of a hearing, the ~~board~~ board or its hearings officer may order site inspections of the area pertinent to the application. The ~~board~~ board shall within 20 days of the hearing notify the person who requested the hearing, by certified mail, and all other persons, by regular mail, of the findings and decisions. A person who presided at the informal conference may not preside at the hearing or participate in the decision.

(10) In addition to the method of operation, grading, backfilling, highwall reduction, subsidence stabilization, water control, topsoiling, and reclamation requirements of this part and rules adopted under this part, the operator, consistent with the directives of subsection (1), shall:

(a) bury under adequate fill all toxic materials, shale, mineral, or any other material determined by the department to be acid-producing, toxic, undesirable, or creating a hazard;

(b) as directed by rules, seal off tunnels, shafts, or other openings or any breakthrough of water

creating a hazard;

(c) impound, drain, or treat all runoff or underground mine waters so as to reduce soil erosion, damage to grazing and agricultural lands, and pollution of surface and subsurface waters;

(d) remove or bury all metal, lumber, and other refuse resulting from the operation;

(e) use explosives in connection with the operation only in accordance with department regulations designed to minimize noise, damage to adjacent lands, and water pollution and ensure public safety and for other purposes;

(f) adopt measures to prevent land subsidence unless the department approves a plan for inducing subsidence into an abandoned operation in a predictable and controlled manner, with measures for grading, topsoiling, and revegetating the subsided land surface. In order for a controlled subsidence plan to be approved, the applicant is required to show that subsidence will not cause a direct or indirect hazard to any public or private buildings, roads, facilities, or use areas, constitute a hazard to human life or health or to domestic livestock or a viable agricultural operation, or violate any other restrictions the department may consider necessary.

(g) stockpile and protect from erosion all mining and processing wastes until these wastes can be disposed of according to the provisions of this part;

(h) deposit as much stockpiled waste material as possible back into the mine voids upon abandonment in a manner that will prevent or minimize land subsidence. The remaining waste material must be disposed of as provided by this part and the rules of the ~~board~~ department.

(i) seal all portals, entryways, drifts, shafts, or other openings between the surface and underground mine workings when no longer needed;

(j) to the extent possible using the best technology currently available, minimize disturbances and adverse impacts of the operation on fish, wildlife, and related environmental values and achieve enhancement of those resources when practicable;

(k) minimize the disturbances to the prevailing hydrologic balance at the mine site and in adjacent areas and to the quality and quantity of water in surface water and ground water systems both during and after strip- or underground-coal-mining operations and during reclamation by:

(i) avoiding acid or other toxic mine drainage by measures including but not limited to:

- (A) preventing or removing water from contact with toxic-producing deposits;
- (B) treating drainage to reduce toxic content that adversely affects downstream water upon being released to watercourses;
- (C) casing, sealing, or otherwise managing boreholes, shafts, and wells and keeping acid or other toxic drainage from entering ground and surface waters;
- (ii) (A) conducting strip- or underground-mining operations so as to prevent, to the extent possible using the best technology currently available, additional contributions of suspended solids to streamflow or runoff outside the permit area, but the contributions may not be in excess of requirements set by applicable state or federal law;
- (B) constructing any siltation structures pursuant to subsection (10)(k)(ii)(A) prior to commencement of strip- or underground-mining operations, with the structures to be certified by a qualified registered engineer and to be constructed as designed and as approved in the reclamation plan;
- (iii) cleaning out and removing temporary or large settling ponds or other siltation structures from drainways after disturbed areas are revegetated and stabilized and depositing the silt and debris at a site and in a manner approved by the department;
- (iv) restoring recharge capacity of the mined area to approximate premining conditions;
- (v) avoiding channel deepening or enlargement in operations that requires the discharge of water from mines;
- (vi) preserving throughout the mining and reclamation process the essential hydrologic functions of alluvial valley floors in the arid and semiarid areas of the country;
- (vii) designing and constructing reclaimed channels of intermittent streams and perennial streams to ensure long-term stability; and
- (viii) any other actions that the department may prescribe;
- (l) conduct strip- or underground-mine operations in accordance with the approved coal conservation plan;
- (m) stabilize and protect all surface areas, including spoil piles, to effectively control air pollution;
- (n) seal all auger holes with an impervious and noncombustible material in order to prevent drainage except when the department determines that the resulting impoundment of water in the auger holes may create

a hazard to the environment or the public health and safety;

(o) develop contingency plans to prevent sustained combustion;

(p) refrain from construction of roads or other access ways up a streambed or drainage channel or in proximity to the channel so as to seriously alter the normal flow of water;

(q) meet other criteria that are necessary to achieve reclamation in accordance with the purposes of this part, taking into consideration the physical, climatological, and other characteristics of the site;

(r) with regard to underground mines, eliminate fire hazards and otherwise eliminate conditions that constitute a hazard to health and safety of the public;

(s) locate openings for all new drift mines working acid-producing or iron-producing coal seams in a manner that prevents a gravity discharge of water from the mine.

(11) An operator may not throw, dump, pile, or permit the throwing, dumping, or piling or otherwise placing of any overburden, stones, rocks, mineral, earth, soil, dirt, debris, trees, wood, logs, or any other materials or substances of any kind or nature beyond or outside of the area of land that is under permit and for which a bond has been posted under 82-4-223 or place the materials described in this section in a way that normal erosion or slides brought about by natural physical causes will permit the materials to go beyond or outside of that area of land. An operator shall conduct the strip- or underground-mining operation in a manner that protects areas outside the permit area."

Section 91. Section 82-4-232, MCA, is amended to read:

"82-4-232. Area mining required -- bond -- alternative plan. (1) (a) Area strip mining, a method of operation that does not produce a bench or fill bench, is required where strip mining is proposed. The area of land affected must be backfilled and graded to the approximate original contour of the land. However:

(i) consistent with the adjacent unmined landscape elements, the operator may propose and the department may approve regraded topography gentler than premining topography in order to enhance the postmining land use and develop a postmining landscape that will provide greater moisture retention, greater stability, and reduced soil losses from runoff and erosion;

(ii) postmining slopes may not exceed the angle of repose or lesser slope as is necessary to achieve a long-term static safety factor of 1.3 or greater and to prevent slides;

(iii) permanent impoundments may be approved if they are suitable for the postmining land use and otherwise meet the requirements of this part, as provided by ~~board~~department rules; and

(iv) reclaimed topography must be suitable for the approved postmining land use.

(b) Spoil from the first cut is not required to be transported to the last cut if highwalls are eliminated, box cut spoils are graded to blend in with the surrounding terrain, and the approximate original contour of the land is achieved.

(c) When directed by the department, the operator shall construct in the final grading diversion ditches, depressions, or terraces that will accumulate or control the water runoff.

(2) In addition to the backfilling and grading requirements, the operator's method of operation on steep slopes may be regulated and controlled according to rules adopted by the ~~board~~department. These rules may require any measure to accomplish the purpose of this part.

(3) For coal mining on prime farmlands, the ~~board~~department shall establish by rule specifications for soil removal, storage, replacement, and reconstruction, and the operator must as a minimum be required to:

(a) (i) segregate the A horizon of the natural soil, except when it can be shown that other available soil materials will create a final soil having a greater productive capacity; and

(ii) if not used immediately, stockpile this material separately from other spoil and provide needed protection from wind and water erosion or contamination by other acid or toxic material;

(b) (i) segregate the B horizon of the natural soil, or underlying C horizon or other strata, or a combination of the horizons or other strata that are shown to be both texturally and chemically suitable for plant growth and that can be shown to be equally or more favorable for plant growth than the B horizon in sufficient quantities to create in the regraded final soil a root zone of comparable depth and quality to that that existed in the natural soil; and

(ii) if not used immediately, stockpile this material separately from other spoil and provide needed protection from wind and water erosion or contamination by acid or toxic material;

(c) replace and regrade the root zone material described in subsection (3)(b) with proper compaction and uniform depth over the regraded spoil material; and

(d) redistribute and grade in a uniform manner the surface soil horizon described in subsection (3)(a).

(4) All available topsoil must be removed in a separate layer, guarded from erosion and pollution, and

kept in a condition so that it can sustain vegetation of at least the quality and variety it sustained prior to removal. However, the operator shall accord substantially the same treatment to any subsurface deposit of material that is capable, as determined by the department, of supporting surface vegetation virtually as well as the present topsoil. After the operation has been backfilled and graded, the topsoil or the best available subsurface deposit of material that is best able to support vegetation must be returned as the top layer.

(5) As determined by rules of the ~~board~~ department, time limits must be established requiring backfilling, grading, subsidence stabilization, water control, highwall reduction, topsoiling, planting, and revegetation to be kept current. All backfilling, subsidence stabilization, sealing, grading, and topsoiling must be completed before necessary equipment is moved from the operation.

(6) (a) The permittee may file an application with the department for the release of all or part of a performance bond. The application must contain a proposed public notice of the precise location of the land affected, the number of acres for which bond release is sought, the permit and the date approved, the amount of the bond filed and the portion sought to be released, the type and appropriate dates of reclamation work performed, and a description of the results achieved as they relate to the permittee's approved reclamation plan. In addition, as part of any bond release application, the permittee shall submit copies of letters that the permittee has sent to adjoining property owners, local governmental bodies, planning agencies, and sewage and water treatment authorities or water companies in the locality of the operation, notifying them of the permittee's intention to seek release from the bond.

(b) The department shall determine whether the application is administratively complete. An application is administratively complete if it includes:

- (i) the location and acreage of the land for which bond release is sought;
- (ii) the amount of bond release sought;
- (iii) a description of the completed reclamation, including the date of performance;
- (iv) a discussion of how the results of the completed reclamation satisfy the requirements of the approved reclamation plan; and
- (v) information required by rules implementing this part.

(c) The department shall notify the applicant in writing of its determination no later than 60 days after submittal of the application. If the department determines that the application is not administratively complete, it

shall specify in the notice those items that the application must address. After an application for bond release has been determined to be administratively complete by the department, the permittee shall publish a public notice that has been approved as to form and content by the department at least once a week for 4 successive weeks in a newspaper of general circulation in the locality of the mining operation.

(d) Any person with a valid legal interest that might be adversely affected by the release of a bond or the responsible officer or head of any federal, state, or local governmental agency that has jurisdiction by law or special expertise with respect to any environmental, social, or economic impact involved in the operation or is authorized to develop and enforce environmental standards with respect to the operation may file written objections to the proposed release of bond to the department within 30 days after the last publication of the notice. If written objections are filed and a hearing is requested, the department shall hold a public hearing in the locality of the operation proposed for bond release or in Helena, at the option of the objector, within 30 days of the request for hearing. The department shall inform the interested parties of the time and place of the hearing. The date, time, and location of the public hearing must be advertised by the department in a newspaper of general circulation in the locality for 2 consecutive weeks. Within 30 days after the hearing, the department shall notify the permittee and the objector of its final decision.

(e) Without prejudice to the rights of the objector or the permittee or the responsibilities of the department pursuant to this section, the department may establish an informal conference to resolve written objections.

(f) For the purpose of the hearing under subsection (6)(d), the department may administer oaths, subpoena witnesses or written or printed materials, compel the attendance of witnesses or the production of materials, and take evidence, including but not limited to conducting inspections of the land affected and other operations carried on by the permittee in the general vicinity. A verbatim record of each public hearing required by this section must be made, and a transcript must be made available on the motion of any party or by order of the department.

(g) If the applicant significantly modifies the application after the application has been determined to be administratively complete, the department shall conduct a new review, including an administrative completeness determination. A significant modification includes but is not limited to:

(i) the notification of an additional property owner, local governmental body, planning agency, or

sewage and water treatment authority of the permittee's intention to seek a bond release;

(ii) a material increase in the acreage for which a bond release is sought or in the amount of bond release sought; or

(iii) a material change in the reclamation for which a bond release is sought or the information used to evaluate the results of that reclamation.

(h) The department shall, within 30 days of determining that the application is administratively complete or as soon as weather permits, conduct an inspection and evaluation of the reclamation work involved. In the evaluation, the department shall consider, among other things, the degree of difficulty in completing any remaining reclamation, whether pollution of surface and subsurface water is occurring, the probability of continuance or future occurrence of the pollution, and the estimated cost of abating the pollution.

(i) The department shall review each administratively complete application to determine the acceptability of the application. A complete application is acceptable if the application is in compliance with all of the applicable requirements of this part, the rules adopted under this part, and the permit.

(j) (i) The department shall notify the applicant in writing regarding the acceptability of the application no later than 60 days from the date of the inspection.

(ii) If the department determines that the application is not acceptable, it shall specify in the notice those items that the application must address.

(iii) If the applicant revises the application in response to a notice of unacceptability, the department shall review the revised application and notify the applicant in writing within 60 days of the date of receipt as to whether the revised application is acceptable.

(iv) If the revision constitutes a significant modification, the department shall conduct a new review, beginning with an administrative completeness determination.

(v) A significant modification includes but is not limited to:

(A) the notification of an additional property owner, local governmental body, planning agency, or sewage and water treatment authority of the permittee's intention to seek a bond release;

(B) a material increase in the acreage for which a bond release is sought or the amount of bond release sought; or

(C) a material change in the reclamation for which a bond release is sought or the information used to

evaluate the results of that reclamation.

(k) The department shall release the bond in whole or in part if it is satisfied the reclamation covered by the bond or portion of the bond has been accomplished as required by this part according to the following schedule:

(i) When the permittee completes the plugging, backfilling, regrading, and drainage control of a bonded area in accordance with the approved reclamation plan, the department shall release 60% of the bond or collateral for the applicable permit area.

(ii) After revegetation has been established on the regraded lands in accordance with the approved reclamation plan, the department shall, for the period specified for operator responsibility of reestablishing revegetation, retain that amount of bond for the revegetated area that would be sufficient for a third party to cover the cost of reestablishing revegetation. Whenever a silt dam is to be retained as a permanent impoundment, the portion of bond may be released under this subsection (6)(k)(ii) if provisions for sound future maintenance by the operator or the landowner have been made with the department. Any part of the bond may not be released under this subsection (6)(k)(ii):

(A) as long as the lands to which the release would be applicable are contributing suspended solids to streamflow or runoff outside the permit area in excess of the requirements of 82-4-231(10)(k); or

(B) before soil productivity for prime farm lands to which the release would be applicable has returned to equivalent levels of yield as nonmined land of the same soil type in the surrounding area under equivalent management practices, as determined from the soil survey.

(iii) When the permittee has successfully completed all prospecting, mining, and reclamation activities, the department shall release the remaining portion of the bond, but not before the expiration of the period specified for responsibility and not until all reclamation requirements of this part are fully met.

(l) If the department disapproves the application for release of the bond or a portion of the bond, it shall:

(i) provide to the permittee detailed written findings demonstrating that the reclamation covered by the bond or a portion of the bond has not been accomplished as required by this part; and

(ii) recommend corrective actions necessary to secure the release and allowing opportunity for a public hearing.

(m) When an application for total or partial bond release is filed with the department, it shall notify the municipality or county in which a prospecting or mining operation is located by certified mail at least 30 days prior to the release of all or a portion of the bond.

(7) All disturbed areas must be reclaimed in a timely manner to conditions that are capable of supporting the land uses that they were capable of supporting prior to any mining or to higher or better uses as approved pursuant to subsection (8).

(8) (a) An operator may propose a higher or better use as an alternative postmining land use. If the landowner is not the operator, the operator shall submit written documentation of the concurrence of the landowner or the land management agency with jurisdiction over the land. The department may approve the proposed alternative postmining land use only if it meets all of the following criteria:

(i) There is a reasonable likelihood for achievement of the alternative land use.

(ii) The alternative land use does not present any actual or probable hazard to the public health or safety or any threat of water diminution or pollution.

(iii) The alternative land use will not:

(A) be impractical or unreasonable;

(B) be inconsistent with applicable land use policies or plans;

(C) involve unreasonable delay in implementation; or

(D) cause or contribute to violation of federal, state, or local law.

(b) As used in this section, the term "landowner" includes a person who has sold the surface estate to the operator with an option to repurchase the surface estate after mining and reclamation are complete.

(9) The reclamation plan must incorporate appropriate wildlife habitat enhancement features that are integrated with cropland, grazing land, pastureland, land occasionally cut for hay, or other uses in order to enhance habitat diversity, with emphasis on big game animals, game birds, and threatened and endangered species that have been documented to live in the area of land affected, and to enhance wetlands and riparian areas along rivers and streams and bordering ponds and lakes. Incorporation of wildlife habitat enhancement features does not constitute a change in land use to fish and wildlife habitat and may not interfere with the designated land use.

(10) Facilities existing prior to mining, including but not limited to public roads, utility lines, railroads, or

pipelines, may be replaced as part of the reclamation plan."

Section 92. Section 82-4-234, MCA, is amended to read:

"82-4-234. Commencement of reclamation. The operator shall commence the reclamation of the area of land affected by the operator's operation as soon as possible after the beginning of strip mining or underground mining of that area in accordance with plans previously approved by the department. Those grading, backfilling, subsidence stabilization, topsoiling, and water management practices that are approved in the plans must be kept current with the operation as defined by rules of the ~~board~~ department, and a permit or supplement to a permit may not be issued if, in the discretion of the department, these practices are not current."

Section 93. Section 82-4-235, MCA, is amended to read:

"82-4-235. Determination of successful revegetation -- final bond release. (1) Success of revegetation must be judged on the effectiveness of the vegetation for the approved postmining land use, the extent of cover compared to the cover occurring in the natural vegetation, and the requirements of 82-4-233. Standards for success are:

(a) for areas reclaimed for use as cropland, crop production must be at least equal to that achieved prior to mining based on comparison with historical data, comparable reference areas, or United States department of agriculture publications applicable to the area of the operation, as referenced in rules adopted by the ~~board~~ department;

(b) for areas reclaimed for use as pastureland or grazing land, the ground cover and production of living plants on the revegetated area must be at least equal to that of a reference area or other standard approved by the department as appropriate for the postmining land use;

(c) for areas reclaimed for use as fish and wildlife habitat, forestry, or recreation, success of revegetation must be determined on the basis of approved tree density standards or shrub density standards, or both, and vegetative ground cover required to achieve the postmining land use;

(d) reestablished vegetation is considered effective if the postmining land use is achieved and erosion is controlled;

(e) reestablished vegetation is considered permanent if it is diverse and effective at the end of the 10-year responsibility period specified under subsection (2); and

(f) plant species composing the reestablished vegetation are considered to have the same seasonal characteristics of growth as the original vegetation, to be capable of regeneration and plant succession, and to be compatible with the plant and animal species of the area if those plant species are native to the area or are introduced species approved by the department as desirable and necessary to achieve the postmining land use.

(2) Inspection and evaluation of reclaimed vegetative cover must be made as soon as possible following an application for final bond release to determine if a satisfactory stand has been established. If the department determines that a satisfactory vegetative cover has been established, it shall release the remaining bond held on the area reclaimed after public notice and an opportunity for hearing as provided in 82-4-232(6). Except as provided in subsection (3), the remaining bond may not be released prior to a period of 10 years after the last year of augmented seeding, fertilizing, irrigation, or other work required under this part for those operations or portions of operations that were seeded after May 2, 1978, or prior to a period of 5 years after initial planting for all exploration activities and all other operations.

(3) (a) Vegetative cover of water management facilities and other support facilities composing no more than 10% of the area for which bond release is sought is not subject to the 10-year responsibility period. Water management facilities and other support facilities include sedimentation ponds, diversions, other water management structures, soils stockpiles, and access roads.

(b) Vegetative cover of water management facilities and other support facilities composing no more than 10% of the area for which bond release is sought is eligible for bond release if the vegetative cover otherwise meets the reclamation standards in subsection (1).

(4) (a) Notwithstanding the provisions of subsections (2) and (3), on land from which coal was removed prior to May 3, 1978, and on land from which coal was not removed and that was not used, disturbed, or redisturbed in connection with this part after May 2, 1978, pursuant to a permit issued by the department under this part, the department may approve for release a bond on an area of reclaimed vegetation that meets the following criteria:

(i) it was seeded using a seed mixture that was approved by the department under the criteria

established pursuant to 82-4-233 and that included introduced species; and

(ii) at least one of the following conditions exists:

(A) the standards of 82-4-233(1) are otherwise achieved;

(B) the operator has demonstrated substantial usefulness of the reclaimed vegetation for grazing of livestock;

(C) the operator demonstrates that the reclaimed vegetation has substantial value as a habitat component for wildlife present in the area; or

(D) the topography and soils are suitable for conversion to cropland or hayland consistent with the standards of 82-4-232 and the department approves and the operator completes that conversion.

(b) On lands that meet the criteria described in subsection (4)(a), interseeding or supplemental planting may be performed without reinitiating the liability period provided in subsection (2)."

Section 94. Section 82-4-239, MCA, is amended to read:

"82-4-239. Reclamation. (1) The department may have reclamation work done by its employees, by employees of other governmental agencies, by soil conservation districts, or through contracts with qualified persons. The ~~board~~ department may construct, operate, and maintain plants for the control and treatment of water pollution resulting from mine drainage.

(2) Any funds or any public works programs available to the department must be used and expended to reclaim and rehabilitate lands that have been subjected to strip mining or underground mining and that have not been reclaimed and rehabilitated in accordance with the standards of this part. The department shall cooperate with federal, state, and private agencies to engage in cooperative projects under this section.

(3) Agents, employees, or contractors of the department may enter upon any land for the purpose of conducting studies or exploratory work to determine whether the land has been strip- or underground-mined and not reclaimed and rehabilitated in accordance with the requirements of this part and to determine the feasibility of restoration, reclamation, abatement, control, or prevention of any adverse effects of past coal-mining practices. Upon request of the director of the department, the attorney general shall bring an injunctive action to restrain any interference with the exercise of the right to enter and inspect granted in this subsection. The action must be brought in the county in which the mine is located.

(4) (a) The department shall take the actions described in subsection (4)(b) when it makes a finding of fact that:

- (i) land or water resources have been adversely affected by past coal-mining practices;
- (ii) the adverse effects are at a stage at which, in the public interest, action to restore, reclaim, abate, control, or prevent should be taken; and
- (iii) the owners of the land or water resources where entry must be made to restore, reclaim, abate, control, or prevent the adverse effects of past coal-mining practices are not known or readily available or the owners will not give permission for the department or its agents, employees, or contractors to enter upon the property to restore, reclaim, abate, control, or prevent the adverse effects of past coal-mining practices.

(b) After giving notice by mail to the owner, if known, and any purchaser under contract for deed, if known, or, if neither is known, by posting notice on the premises and advertising in a newspaper of general circulation in the county in which the land lies, the agents, employees, or contractors of the department may enter on the property adversely affected by past coal-mining practices and on any other property necessary for access to the mineral property to do all things necessary or expedient to restore, reclaim, abate, control, or prevent the adverse effects of past coal-mining practices.

(c) Action taken under subsection (4)(b) is not an act of condemnation of property or of trespass, but rather is an exercise of the power granted by Article IX, sections 1 and 2, of the Montana constitution.

(5) (a) Within 6 months after the completion of projects to restore, reclaim, abate, control, or prevent adverse effects of past coal-mining practices on privately owned land, the department shall itemize the money expended and may file a statement of those expenses in the office of the clerk and recorder of the county in which the land lies, together with a notarized appraisal by an independent appraiser of the value of the land before the restoration, reclamation, abatement, control, or prevention of adverse effects of past coal-mining practices if the money expended resulted in a significant increase in property value. The statement constitutes a lien upon the land. The lien may not exceed the amount determined by the appraisal to be the increase in the market value of the land as a result of the restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal-mining practices. A lien under this subsection (5)(a) may not be filed against the property of a person who owned the surface prior to May 2, 1977, and who did not consent to, participate in, or exercise control over the mining operation that necessitated the reclamation performed under this part.

(b) The landowner may petition within 60 days of the filing of the lien to determine the increase in the market value of the land as a result of the restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal-mining practices. The amount reported to be the increase in value of the premises constitutes the amount of the lien and must be recorded with the statement provided for in this section. Any party aggrieved by the decision may appeal as provided by law.

(c) The lien provided in this section must be recorded at the office of the county clerk and recorder. The statement constitutes a lien upon the land as of the date of the expenditure of the money and has priority as a lien second only to the lien of real estate taxes imposed upon the land.

(6) The department may acquire the necessary property by gift or purchase. A gift or purchase must be approved by the board of land commissioners. If the property cannot be acquired by gift or purchase at a reasonable cost, proceedings may be instituted in the manner provided in Title 70, chapter 30, against all nonaccepting landholders if:

(a) the property is necessary for successful reclamation;

(b) the acquired land after restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal-mining practices will serve recreation and historic purposes or conservation and reclamation purposes or provide open space benefits; and

(c) (i) permanent facilities, such as treatment plants or relocated stream channels, will be constructed on the land for the restoration, reclamation, abatement, control, or prevention of the adverse effects of past strip- or underground-coal-mining practices; or

(ii) acquisition of coal refuse disposal sites and all coal refuse on the land will serve the purposes of this part because public ownership is desirable to meet emergency situations and prevent recurrences of the adverse effects of past coal-mining practices."

Section 95. Section 82-4-254, MCA, is amended to read:

"82-4-254. Violation -- penalty -- waiver. (1) (a) Except as provided in subsection (2), a person or operator who violates any of the provisions of this part, rules adopted or orders issued under this part, or term or condition of a permit and any director, officer, or agent of a corporation who purposely or knowingly authorizes, orders, or carries out a violation shall pay an administrative penalty of not less than \$100 or more

than \$5,000 for the violation and an additional administrative penalty of not less than \$100 or more than \$5,000 for each day during which a violation continues and may be enjoined from continuing the violations as provided in this section. A person or operator who fails to correct a violation within the period permitted by law, rule ~~of the board~~, or order of the department must be assessed a penalty of not less than \$750 for each day, up to 30 days, during which the failure or violation continues.

(b) Penalties assessed under this section must be determined in accordance with the penalty factors in 82-4-1001.

(c) The period permitted for correction of a violation does not, in the case of any review proceeding under 82-4-251(6), end until entry of a final order suspending the abatement requirements or until entry of an order of court ordering suspension of the abatement requirements. If the failure to abate continues for more than 30 days, the department shall, within 30 days after the 30-day period, take appropriate action pursuant to 82-4-251(3) or request action under subsection (4) or (6) of this section.

(2) The department may waive the penalty for a minor violation of this part, a rule adopted or an order issued under this part, or a term or condition of a permit if the department determines that the violation is not of potential harm to public health, public safety, or the environment and does not impair the administration of this part. The department may not waive a penalty assessed under this section if the person or operator fails to abate the violation as directed under 82-4-251. ~~The board~~ department shall adopt rules to implement and administer a procedure for waiver of a penalty under this subsection.

(3) (a) To assess an administrative penalty under this section, the department shall issue a notice of violation and penalty order to the person or operator, unless the penalty is waived pursuant to subsection (2). The notice and order must specify the provision of this part, rule adopted or order issued under this part, or term or condition of a permit that is violated and must contain findings of fact, conclusions of law, and a statement of the proposed administrative penalty. The notice and order must be served personally or by certified mail. Service by mail is complete 3 business days after the date of mailing. The notice and order become final unless, within 30 days after the order is served, the person or operator to whom the order was issued requests a hearing before the ~~board~~ board. By submitting to the ~~board~~ board a written request within 30 days of service of the notice of violation, stating the reason for the request, the person or operator is entitled to a hearing before the ~~board~~ board under 82-4-206 on the issues of whether the alleged violation has occurred

and whether the penalty proposed to be assessed is proper. On receipt of a request, the ~~board~~board shall schedule a hearing. After a hearing, the ~~board~~board shall make findings of fact and issue a written decision as to the occurrence of the violation and the amount of penalty warranted. If the ~~board~~board finds that the violation occurred and a penalty is warranted, it shall order the payment of the penalty. If the time for requesting a hearing expires without a hearing request, the person or operator shall remit the amount of the penalty within 30 days of the expiration of the period for requesting a hearing.

(b) If the person or operator to whom a final order is issued under subsection (3)(a) wishes to obtain judicial review of the order, the person or operator shall submit with any assessed penalty a statement that the penalty is being paid under protest and the department shall hold the payment in escrow until judicial review is complete. Any person or operator who fails to request and submit testimony at the hearing provided for in subsection (3)(a) or who fails to pay any assessed penalty under protest within 30 days of the order assessing the penalty forfeits the right to seek judicial review of the violation and penalty determinations.

(c) Penalties provided for in this section are recoverable in an action brought by the department. The action must be filed in the district court of the first judicial district, Lewis and Clark County, if mutually agreed on by the parties in the action, or in the district court having jurisdiction over the defendant.

(4) The department may bring an action for a restraining order or temporary or permanent injunction against an operator or other person who:

(a) violates, threatens to violate, or fails or refuses to comply with any order or decision issued under this part;

(b) interferes with, hinders, or delays the department in carrying out the provisions of this part;

(c) refuses to admit an authorized representative of the department to the permit area;

(d) refuses to permit inspection of the permit area by an authorized representative of the department;

(e) refuses to furnish any information or report requested by the department in furtherance of the provisions of this part; or

(f) refuses to permit access to and copying of records that the department determines to be necessary in carrying out the provisions of this part.

(5) Any relief granted by a court under subsection (4)(a) continues in effect until the completion or final termination of all proceedings for review of relief granted under this part unless, prior to the final

determination, the district court granting the relief sets it aside or modifies it.

(6) A person who violates any of the provisions of this part or any determination or order issued under this part or who purposely or knowingly violates any permit condition issued under this part is guilty of a misdemeanor and shall be fined an amount not less than \$500 and not more than \$10,000 or be imprisoned for not more than 1 year, or both. Each day on which the violation occurs constitutes a separate offense.

(7) A person who knowingly makes any false statement, representation, or certification or knowingly fails to make any statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained pursuant to this part shall upon conviction be punished by a fine of not more than \$10,000 or by imprisonment for not more than 1 year, or both.

(8) A person who except as permitted by law purposely or knowingly resists, prevents, impedes, or interferes with the department or its agents in the performance of duties pursuant to this part shall be punished by a fine of not more than \$5,000 or by imprisonment for not more than 1 year, or both.

(9) An employee of the department performing any function or duty under this part may not have a direct or indirect financial interest in any strip- or underground-coal-mining operation. A person who knowingly violates the provisions of this subsection shall upon conviction be punished by a fine of not more than \$2,500 or by imprisonment of not more than 1 year, or both.

(10) Within 30 days after receipt of full payment of an administrative penalty assessed under this section, the department shall issue a written release of civil liability for the violations for which the penalty was assessed."

Section 96. Section 82-4-304, MCA, is amended to read:

"82-4-304. Exemption -- works performed prior to promulgation of rules. This part is not applicable to any exploration or mining work performed prior to the date of promulgation of the ~~board's~~ initial rules pursuant to 82-4-321 relating to exploration and mining. This part is not applicable to the reprocessing of tailings or waste rock that occurred prior to the date of promulgation of the ~~board's~~ initial rules regarding those activities. If, after the date of promulgation of initial rules applicable to mills not located at a mine site, work is performed at a mill that does not use cyanide ore-processing reagent and that was constructed and operated before promulgation of those rules, this part applies only to the areas initially disturbed after promulgation of

those rules."

Section 97. Section 82-4-309, MCA, is amended to read:

"82-4-309. Exemption -- operations on federal lands. This part ~~shall not be applicable~~ does not apply to operations on certain federal lands as specified by the ~~board~~ department, provided it is first determined by the ~~board~~ department that federal law or regulations issued by the federal agency administering such land impose controls for reclamation of said lands substantially equal to or greater than those imposed by this part."

Section 98. Section 82-4-321, MCA, is amended to read:

"82-4-321. Administration. The department is charged with the responsibility of administering this part. ~~In order to implement its terms and provisions, the board shall from time to time promulgate such and adopting~~ rules as the ~~board~~ department shall deem necessary. The department shall employ experienced, qualified persons in the field of mined-land reclamation who, for the purpose of this part, are referred to as supervisors."

Section 99. Section 82-4-332, MCA, is amended to read:

"82-4-332. Exploration license. (1) An exploration license must be issued to any applicant who:

- (a) pays a fee of \$100 to the department;
- (b) agrees to reclaim any surface area damaged by the applicant during exploration operations, as may be reasonably required by the department;
- (c) is not in default of any other reclamation obligation under this law.

(2) An application for an exploration license must be made in writing, notarized, and submitted to the department in duplicate upon forms prepared and furnished by it. The application must include an exploration map or sketch in sufficient detail to locate the area to be explored and to determine whether significant environmental problems would be encountered. The ~~board~~ department shall by rule determine the precise nature of the exploration map or sketch. The applicant shall state what type of prospecting and excavation techniques will be employed in disturbing the land.

(3) Prior to the issuance of an exploration license, the applicant shall file with the department a reclamation and revegetation bond in a form and amount as determined by the department in accordance with

82-4-338.

(4) In the event that the holder of an exploration license desires to mine the area covered by the exploration license and has fulfilled all of the requirements for an operating permit, the department shall allow the postponement of the reclamation of the acreage explored if that acreage is incorporated into the complete reclamation plan submitted with the application for an operating permit. Any land actually affected by exploration or excavation under an exploration license and not covered by the operating reclamation plan must be reclaimed within 2 years after the completion of exploration or abandonment of the site in a manner acceptable to the department."

Section 100. Section 82-4-335, MCA, is amended to read:

"82-4-335. Operating permit -- limitation -- fees. (1) A person may not engage in mining, ore processing, or reprocessing of tailings or waste material, construct or operate a hard-rock mill, use cyanide ore-processing reagents or other metal leaching solvents or reagents, or disturb land in anticipation of those activities in the state without first obtaining a final operating permit from the department. Except as provided in subsection (2), a separate final operating permit is required for each complex.

(2) (a) A person who engages in the mining of rock products or a landowner who allows another person to engage in the mining of rock products from the landowner's land may obtain an operating permit for multiple sites if each of the multiple sites does not:

(i) operate within 100 feet of surface water or in ground water or impact any wetland, surface water, or ground water;

(ii) have any water impounding structures other than for storm water control;

(iii) have the potential to produce acid, toxic, or otherwise pollutive solutions;

(iv) adversely impact a member of or the critical habitat of a member of a wildlife species that is listed as threatened or endangered under the Endangered Species Act of 1973; or

(v) impact significant historic or archaeological features.

(b) A landowner who is a permittee and who allows another person to mine on the landowner's land remains responsible for compliance with this part, the rules adopted pursuant to this part, and the permit for all mining activities conducted on sites permitted pursuant to this subsection (2) with the landowner's permission.

The performance bond required under this part is and must be conditioned upon compliance with this part, the rules adopted pursuant to this part, and the permit of the landowner and any person who mines with the landowner's consent.

(3) A small miner who intends to use a cyanide ore-processing reagent or other metal leaching solvents or reagents shall obtain an operating permit for that part of the small miner's operation where the cyanide ore-processing reagent or other metal leaching solvents or reagents will be used or disposed of.

(4) (a) Prior to receiving an operating permit from the department, a person shall pay the basic permit fee of \$500. The department may require a person who is applying for a permit pursuant to subsection (1) to pay an additional fee not to exceed the actual amount of contractor and employee expenses beyond the normal operating expenses of the department whenever those expenses are reasonably necessary to provide for timely and adequate review of the application, including any environmental review conducted under Title 75, chapter 1, parts 1 and 2. The ~~board~~department may further define these expenses by rule. Whenever the department determines that an additional fee is necessary and the additional fee will exceed \$5,000, the department shall notify the applicant that a fee must be paid and submit to the applicant an itemized estimate of the proposed expenses. The department shall provide the applicant an opportunity to review the department's estimated expenses. The applicant may indicate which proposed expenses the applicant considers duplicative or excessive, if any.

(b) (i) Subject to subsection (4)(b)(ii), a contractor shall, at the request of the applicant, directly submit invoices of contractor expenses to the applicant.

(ii) A contractor's work is assigned, reviewed, accepted, or rejected by the department pursuant to this section.

(5) The person shall submit an application on a form provided by the department, which must contain the following information and any other pertinent data required by rule:

(a) the name and address of the operator, the engineer of record if applicable, and, if a corporation or other business entity, the name and address of its officers, directors, owners of 10% or more of any class of voting stock, partners, and the like and its resident agent for service of process, if required by law;

(b) the minerals expected to be mined;

(c) a proposed reclamation plan;

- (d) the expected starting date of operations;
- (e) a map showing the specific area to be mined and the boundaries of the land that will be disturbed, the topographic detail, the location and names of all streams, roads, railroads, and utility lines on or immediately adjacent to the area, and the location of proposed access roads to be built;
- (f) the names and addresses of the owners of record and any purchasers under contracts for deed of the surface of the land within the permit area and the owners of record and any purchasers under contracts for deed of all surface area within one-half mile of any part of the permit area, provided that the department is not required to verify this information;
- (g) the names and addresses of the present owners of record and any purchasers under contracts for deed of all minerals in the land within the permit area, provided that the department is not required to verify this information;
- (h) the source of the applicant's legal right to mine the mineral on the land affected by the permit, provided that the department is not required to verify this information;
- (i) the types of access roads to be built and manner of reclamation of road sites on abandonment;
- (j) a plan that will provide, within limits of normal operating procedures of the industry, for completion of the operation;
- (k) ground water and surface water hydrologic data gathered from a sufficient number of sources and length of time to characterize the hydrologic regime;
- (l) a plan detailing the design, operation, and monitoring of impounding structures, including but not limited to tailings impoundments and water reservoirs, sufficient to ensure that the structures are safe and stable. For a tailings storage facility, this requirement is met by submission of a design document pursuant to 82-4-376, a panel report pursuant to 82-4-377, and a tailings operation, maintenance, and surveillance manual pursuant to 82-4-379 prior to issuance of a draft permit.
- (m) a plan identifying methods to be used to monitor for the accidental discharge of objectionable materials and remedial action plans to be used to control and mitigate discharges to surface or ground water;
- (n) an evaluation of the expected life of any tailings impoundment or waste area and the potential for expansion of the tailings impoundment or waste site. For a tailings storage facility, this requirement is met by submission of a design document pursuant to 82-4-376, a panel report pursuant to 82-4-377, and a tailings

operation, maintenance, and surveillance manual pursuant to 82-4-379 prior to issuance of a draft permit.

(o) an assessment of the potential for the postmining use of mine-related facilities for other industrial purposes, including evidence of consultation with the county commission of the county or counties where the mine or mine-related facilities will be located.

(6) Except as provided in subsection (8), the permit provided for in subsection (1) for a large-scale mineral development, as defined in 90-6-302, must be conditioned to provide that activities under the permit may not commence until the impact plan is approved under 90-6-307 and until the permittee has provided a written guarantee to the department and to the hard-rock mining impact board of compliance within the time schedule with the commitment made in the approved impact plan, as provided in 90-6-307. If the permittee does not comply with that commitment within the time scheduled, the department, upon receipt of written notice from the hard-rock mining impact board, shall suspend the permit until it receives written notice from the hard-rock mining impact board that the permittee is in compliance.

(7) When the department determines that a permittee has become or will become a large-scale mineral developer pursuant to 82-4-339 and 90-6-302 and provides notice as required under 82-4-339, within 6 months of receiving the notice, the permittee shall provide the department with proof that the permittee has obtained a waiver of the impact plan requirement from the hard-rock mining impact board or that the permittee has filed an impact plan with the hard-rock mining impact board and the appropriate county or counties. If the permittee does not file the required proof or if the hard-rock mining impact board certifies to the department that the permittee has failed to comply with the hard-rock mining impact review and implementation requirements in Title 90, chapter 6, parts 3 and 4, the department shall suspend the permit until the permittee files the required proof or until the hard-rock mining impact board certifies that the permittee has complied with the hard-rock mining impact review and implementation requirements.

(8) Compliance with 90-6-307 is not required for exploration and bulk sampling for metallurgical testing when the aggregate samples are less than 10,000 tons.

(9) A person may not be issued an operating permit if:

(a) that person's failure, or the failure of any firm or business association of which that person was a principal or controlling member, to comply with the provisions of this part, the rules adopted under this part, or a permit or license issued under this part has resulted in either the receipt of bond proceeds by the department or

the completion of reclamation by the person's surety or by the department, unless that person meets the conditions described in 82-4-360;

(b) that person has not paid a penalty for which the department has obtained a judgment pursuant to 82-4-361;

(c) that person has failed to post a reclamation bond required by 82-4-305; or

(d) that person has failed to comply with an abatement order issued pursuant to 82-4-362, unless the department has completed the abatement and the person has reimbursed the department for the cost of abatement.

(10) A person may not be issued a permit under this part unless, at the time of submission of a bond, the person provides the current information required in subsection (5)(a) and:

(a) (i) certifies that the person is not currently in violation in this state of any law, rule, or regulation of this state or of the United States pertaining to air quality, water quality, or mined land reclamation; or

(ii) presents a certification by the administering agency that the violation is in the process of being corrected to the agency's satisfaction or is the subject of a bona fide administrative or judicial appeal; and

(b) if the person is a partnership, corporation, or other business association, provides the certification required by subsection (10)(a)(i) or (10)(a)(ii), as applicable, for any partners, officers, directors, owners of 10% or more of any class of voting stock, and business association members."

Section 101. Section 82-4-338, MCA, is amended to read:

"82-4-338. Performance bond. (1) (a) An applicant for an exploration license or operating permit shall file with the department a bond payable to the state of Montana with surety satisfactory to the department in the sum to be determined by the department of not less than \$200 for each acre or fraction of an acre of the disturbed land, conditioned upon the faithful performance of the requirements of this part, the rules of the ~~board~~ department, and the permit. In lieu of a bond, the applicant may file with the department a cash deposit, an assignment of a certificate of deposit, an irrevocable letter of credit, or other surety acceptable to the department. The bond may not be less than the estimated cost to the state to ensure compliance with Title 75, chapters 2 and 5, this part, the rules, and the permit, including the potential cost of department management, operation, and maintenance of the site upon temporary or permanent operator insolvency or abandonment,

[during a suspension authorized pursuant to 82-4-341(8)(b)(ii) or] until full bond liquidation can be effected.

(b) A public or governmental agency may not be required to post a bond under the provisions of this part.

(c) A blanket performance bond covering two or more operations may be accepted by the department. A blanket bond must adequately secure the estimated total number of acres of disturbed land.

(d) (i) For an exploration license or operating permit authorizing activities on federal land within the state, the department may accept a bond payable to the state of Montana and the federal agency administering the land. The bond must provide at least the same amount of financial guarantee as required by this part.

(ii) The bond must provide that the department may forfeit the bond without the concurrence of the federal land management agency. The bond may provide that the federal land management agency may forfeit the bond without the concurrence of the department. Upon forfeiture by either agency, the bond must be payable to the department and may also be payable to the federal land management agency. If the bond is payable to the department and the federal land management agency, the department, before accepting the bond, shall enter into an agreement or memorandum of understanding with the federal land management agency providing for administration of the bond funds in a manner that will allow the department to provide for compliance with the requirements of this part, the rules adopted under this part, and the permit.

(iii) The department may not enter into an agreement or memorandum of understanding with a federal land management agency that would require the department to impose requirements on an operator that are more stringent than state law and rules.

(2) (a) The department may calculate one or more reclamation plan components within its jurisdiction with the assistance of one or more third-party contractors selected jointly by the department and the applicant and compensated by the applicant when, based on relevant past experience, the department determines that additional expertise is necessary to calculate the bond amount for reclamation plan components. The department may contract for assistance pursuant to this subsection in determining bond amounts for the initial bond and for any subsequent bond review and adjustment. The mine owner is responsible for the first \$5,000 in contractor services provided under this subsection. The mine owner and the department are each responsible for 50% of any amount over \$5,000.

(b) To select a third-party contractor as authorized in subsection (2)(a), the department shall prepare

a list of no fewer than four contractors acceptable to the department and shall provide the applicant with a copy of the list. The applicant shall provide the department with a list of at least 50% of the contractors from the department's list. The department shall select its contractor from the list provided by the applicant.

(3) (a) The department shall conduct an overview of the amount of each bond annually and shall conduct a comprehensive bond review at least every 5 years. The department may conduct additional comprehensive bond reviews if, after modification of a reclamation or operation plan, an annual overview, or an inspection of the permit area, the department determines that an increase of the bond level may be necessary. The department shall consult with the licensee or permittee if a review indicates that the bond level should be adjusted. When determined by the department that the set bonding level of a permit or license does not represent the present costs of compliance with this part, the rules, and the permit, the department shall modify the bonding requirements of that permit or license. The licensee or permittee must have 60 days to negotiate the preliminary bond determination with the department, at the end of which time period the department shall issue the proposed bond determination. The department shall give the licensee or permittee a copy of the bond calculations that form the basis for the proposed bond determination and, for operating permits, publish notice of the proposed bond determination in a newspaper of general circulation in the county in which the operation is located. The department shall issue a final bond determination in 30 days. Unless the licensee or permittee requests a hearing under subsection (3)(b), the licensee or permittee shall post bond with the department in the amount represented by the final bond determination no later than 30 days after issuance of the final bond determination. If the licensee or permittee demonstrates that, through the exercise of reasonable diligence, the licensee or permittee will not be able to post the bond within 30 days, the department shall grant a 30-day extension of the deadline.

(b) The permittee or any person with an interest that may be adversely affected may obtain a contested case hearing before the ~~board~~ board under the provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, on the final bond determination by filing with the department, within 30 days of the issuance of the final bond determination, a written request for hearing stating the reason for the request. The request for hearing must specify the amount of bond increase, if any, that the licensee or permittee considers appropriate and state the reasons that the licensee or permittee considers the department's final bond determination to be excessive. As a condition precedent to any right to request a hearing, the licensee or

permittee shall post bond with the department in the amount of the bond increase that the licensee or permittee has stated is appropriate in the request for hearing or the amount that is one-half of the increase contained in the department's final bond determination, whichever amount is greater. If the ~~board~~board determines that additional bond is necessary, the licensee or permittee shall post bond in the amount determined by the ~~board~~board within 30 days of receipt of the ~~board's~~ decision. If the licensee or permittee demonstrates that, through the exercise of reasonable diligence, the licensee or permittee will not be able to post the bond within 30 days, the department shall grant a reasonable extension of the deadline.

(c) If a licensee or permittee fails to post bond in accordance with subsection (3)(a) or (3)(b) in the required amounts by the required deadlines, the license or permit is suspended by operation of law and the licensee or permittee shall immediately cease mining and exploration operations until the required bond is posted with and approved by the department.

(4) A bond filed in accordance with the provisions of this part may not be released by the department until the provisions of this part, the rules adopted pursuant to this part, and the permit have been fulfilled.

(5) A bond filed for an operating permit obtained under 82-4-335 may not be released or decreased until the public has been provided an opportunity for a hearing and a hearing has been held if requested. The department shall provide reasonable statewide and local notice of the opportunity for a hearing, including but not limited to publishing the notice in newspapers of general daily circulation.

(6) Except as provided in subsection (7), all bonds required in accordance with the provisions of this section must be based upon reasonably foreseeable activities that the applicant may conduct in order to comply with conditions of an operating permit or license. Bonds may be required only for anticipated activities as described in subsection (1). Only those activities that themselves or in conjunction with other activities have a reasonable possibility of occurring may be bonded. Bond calculations, including calculations for the initial bond or for subsequent bond reviews and adjustments, may not include amounts for any occurrence or contingency that is not a reasonably foreseeable result of any activity conducted by the applicant.

(7) (a) If the department determines, based on unanticipated circumstances that are discovered following the issuance of a mining permit, that a substantial and imminent danger to public health, public safety, or the environment exists or that there is a reasonable probability that a violation of water quality standards will occur, the department may require an operator to submit an amended reclamation plan to address the danger

and to post a temporary bond to guarantee the performance of the amended portion of the reclamation plan.

The temporary bond may only be required if the anticipated costs associated with the plan amendment would increase the total bond amount for the current plan by more than 10%, as determined in subsection (7)(b).

(b) (i) In determining the need for the temporary bond and the amount of the temporary bond under subsection (7)(a), the department shall select a third-party contractor in consultation with the operator pursuant to subsection (7)(b)(ii) to provide:

(A) a technical engineering analysis and report on the substantial and imminent danger to public health, public safety, or the environment identified in subsection (7)(a); and

(B) the estimated costs of addressing the potential danger in order to establish the amount of the temporary bond.

(ii) The department shall provide the operator with a list of at least four qualified third-party contractors. The operator shall select two qualified third-party contractors from that list. The department shall select its contractor from the list provided by the operator. The operator shall reimburse the department for the reasonable costs of the third-party contractor.

(c) An approved interim amended reclamation plan and interim bond must remain in effect until the earlier of:

(i) the date that a revised reclamation plan is approved pursuant to 82-4-337 and a permanent bond for the revised reclamation plan is submitted and accepted pursuant to this section; or

(ii) 2 years following the date of submission of a complete application pursuant to 82-4-337 to modify the reclamation plan provision or remedy the conditions that created the need to amend the reclamation plan unless the department approves or denies the complete application within 2 years of submission. The applicant may agree to an extension of this deadline.

(d) Except as provided in subsection (8), the process provided for in this subsection (7) is not subject to the provisions of Title 75, chapter 1.

(8) (a) In determining whether to require amendment of a reclamation plan under subsection (7)(a), the department shall prepare or require the permittee to prepare a written analysis of changes in the reclamation plan that may eliminate or mitigate to an acceptable level the environmental condition. The analysis must include an assessment of the effectiveness of the changes and any potential negative environmental

impacts of the changes. The department shall prepare an environmental impact statement pursuant to Title 75, chapter 1, only if the department determines that the changes would not mitigate the condition to an acceptable level or may have potentially significant negative environmental impacts.

(b) If the department determines that preparation of an environmental impact statement is necessary, the permittee shall pay the department's costs pursuant to 75-1-205.

(9) At the applicant's discretion, bonding in addition to that required by this section may be posted. These unobligated bonds may, on the applicant's request, be applied to future bonds required by this section.

(10) (a) If the department determines that there exists at an area permitted or licensed under this part an imminent danger to public health, public safety, or the environment caused by a violation of this part, the rules adopted pursuant to this part, or the permit or license and if the permittee or licensee fails or refuses to expeditiously abate the danger, the department may immediately suspend the permit or license, enter the site, and abate the danger. The department may ~~thereafter~~ institute proceedings to revoke the license or permit, declare the permittee or licensee in default, and forfeit a portion of the bond, not to exceed \$150,000 or 10% of the bond, whichever is less, to be used to abate the danger. The department shall notify the surety of the forfeiture and the forfeiture amount by certified mail, and the surety shall pay the forfeiture amount to the department within 30 days of receipt of the notice. The department shall, as a condition of any termination of the suspension and revocation proceedings, require that the permittee or licensee reimburse the surety, with interest, for any amount paid to and expended by the department pursuant to this subsection (10) and for the actual cost of the surety's expenses in responding to the department's forfeiture demand.

(b) If the department is unable to permanently abate the imminent danger using the amount forfeited under subsection (10)(a), the department may forfeit additional amounts under the procedure provided in subsection (10)(a).

(c) The department shall return to the surety any money received from the surety pursuant to this subsection (10) and not used by the department to abate the imminent danger. The amount not returned to the surety must be credited to the surety and reduces the penal amount of the bond on a dollar-for-dollar basis.

(d) Any interest accrued on bond proceeds that is not required to abate the imminent danger determined in subsection (10)(a) must be returned to the surety, unless otherwise agreed to in writing by the surety.

(11) If a bond is terminated as a result of the action or inaction of a licensee or permittee or is canceled or otherwise terminated by the surety issuing the bond and the licensee or permittee fails to post a new bond for the entire amount of the terminated bond within 30 days following the notice of termination provided to the department, then the license or permit must be immediately suspended without further action by the department. (Bracketed language in subsection (1)(a) terminates June 30, 2026--sec. 6, Ch. 458, L. 2019.)"

Section 102. Section 82-4-339, MCA, is amended to read:

"82-4-339. Annual report of activities by permittee -- fee -- notice of large-scale mineral developer status. (1) Within 30 days after completion or abandonment of operations on an area under permit or within 30 days after each anniversary date of the permit, whichever is earlier, or at a later date that may be provided by ~~rules of the board~~ rule and each year after that date until reclamation is completed and approved, the permittee shall pay the annual fee of \$100 and shall file a report of activities completed during the preceding year on a form prescribed by the department. The report must:

- (a) identify the permittee and the permit number;
- (b) locate the operation by subdivision, section, township, and range and with relation to the nearest town or other well-known geographic feature;
- (c) estimate acreage to be newly disturbed by operation in the next 12-month period;
- (d) include the number of persons on the payroll for the previous permit year and for the next permit year at intervals that the department considers sufficient to enable a determination of the permittee's status under 90-6-302(4);

- (e) update the information required in 82-4-335(5)(a); and
- (f) update any maps previously submitted or specifically requested by the department. The maps must show:

- (i) the permit area;
- (ii) the unit of disturbed land;
- (iii) the area to be disturbed during the next 12-month period;
- (iv) if completed, the date of completion of operations;
- (v) if not completed, the additional area estimated to be further disturbed by the operation within the

following permit year; and

(vi) the date of beginning, amount, and current status of reclamation performed during the previous 12 months.

(2) Whenever the department determines that the permittee has become or will, during the next permit year, become a large-scale mineral developer, it shall immediately serve written notice of that fact on the permittee, the hard-rock mining impact board, and the county or counties in which the operation is located."

Section 103. Section 82-4-342, MCA, is amended to read:

"82-4-342. Amendment to operating permits. (1) During the term of an operating permit issued under this part, an operator may apply for a permit revision as described in subsections (5)(g) through (5)(j) or an amendment to the permit. The operator may not apply for an amendment to delete disturbed acreage except following reclamation, as required under 82-4-336, and bond release for the disturbance, as required under 82-4-338.

(2) (a) The ~~board~~department may by rule establish criteria for the classification of amendments as major or minor. The ~~board~~department shall adopt rules establishing requirements for the content of applications for revisions and major and minor amendments and the procedures for processing revisions and minor amendments.

(b) An amendment must be considered minor if:

- (i) it is for the purpose of retention of mine-related facilities that are valuable for postmining use;
- (ii) evidence is submitted showing that a local government has requested retention of the mine-related facilities for a postmining use; and
- (iii) the postmining use of the mine-related facilities meets the requirements provided for in 82-4-336.

(3) Applications for major amendments must be processed pursuant to 82-4-337.

(4) The department shall review an application for a revision or a minor amendment and provide a notice of decision on the adequacy of the application within 30 days. If the department does not respond within 30 days, then the permit is revised or amended in accordance with the application.

(5) The department is not required to prepare an environmental assessment or an environmental impact statement for the following categories of action and permit revisions:

- (a) actions that qualify for a categorical exclusion as defined by rule or justified by a programmatic review pursuant to Title 75, chapter 1;
- (b) administrative actions, such as routine, clerical, or similar functions of a department, including but not limited to administrative procurement, contracts for consulting services, and personnel actions;
- (c) repair or maintenance of the permittee's equipment or facilities;
- (d) investigation and enforcement actions, such as data collection, inspection of facilities, or enforcement of environmental standards;
- (e) ministerial actions, such as actions in which the agency does not exercise discretion, but acts upon a given state of facts in a prescribed manner;
- (f) approval of actions that are primarily social or economic in nature and that do not otherwise affect the human environment;
- (g) changes in a permit boundary that increase disturbed acres that are insignificant in impact relative to the entire operation, provided that the increase is less than 25 acres or 10% of the permitted area, whichever is less;
- (h) changes to an approved reclamation plan if the changes are consistent with this part and rules adopted pursuant to this part;
- (i) changes in an approved operating plan for an activity that was previously permitted if the changes will be insignificant relative to the entire operation and the changes are consistent with subsection (5)(g);
- (j) changes in a permit for the purpose of retention of mine-related facilities that are valuable for postmining use; and
- (k) modifications to a tailings storage facility that result in a minor expansion to the facility if:
 - (i) the proposed modification is certified by the seal of the engineer of record;
 - (ii) the capacity increase resulting from the expansion is no greater than 15% of the capacity of the existing tailings storage facility; and
 - (iii) the modification complies with 82-4-376(2)(l) and (2)(dd) and is exempt under subsection (5)(g), (5)(h), or (5)(i) of this section."

Section 104. Section 82-4-371, MCA, is amended to read:

"82-4-371. Reclamation of abandoned mine sites. (1) Agents, employees, or contractors of the department may enter upon property for the purpose of conducting studies or exploratory work to determine whether the property has been mined and not reclaimed and rehabilitated in accordance with the requirements of this part and to determine the feasibility of restoration or reclamation of the property or abatement, control, or prevention of the adverse effects of past mining practices. The department may bring an injunctive action to restrain interference with the exercise of the right to enter and inspect granted in this subsection.

(2) (a) The department may enter upon property pursuant to subsection (2)(b) if it makes a finding that:

- (i) land or water resources on the property have been adversely affected by past mining practices;
- (ii) the adverse effects are at a stage that, in the public interest, action to restore or reclaim the property or to abate, control, or prevent the adverse effects should be taken; and
- (iii) the owners of the land or water resources where entry must be made to restore or reclaim the property or to abate, control, or prevent the adverse effects of past mining practices are not known or readily available or the owners will not give permission for the department or its agents, employees, or contractors to enter upon the property to restore or reclaim the property or to abate, control, or prevent the adverse effects of past mining practices.

(b) If the department has made findings pursuant to subsection (2)(a), agents, employees, or contractors of the department may enter upon property adversely affected by past mining practices and other property necessary for access to the adversely affected property to do all things necessary or expedient to restore or reclaim the property or to abate, control, or prevent the adverse effects of past mining practices after:

- (i) giving notice by mail to the owner, if known, and a purchaser under contract for deed, if known; or
- (ii) if neither is known, posting notice upon the property and advertising in a newspaper of general circulation in the county in which the property lies.

(c) Entry upon property pursuant to this section is not an act of condemnation of property or of trespass but rather an exercise of the power granted by Article IX, sections 1 and 2, of the Montana constitution.

(3) The ~~board~~department may acquire the necessary property by gift or purchase. A gift or purchase

must be approved by the board of land commissioners. If the property cannot be acquired by gift or purchase at a reasonable cost, proceedings may be instituted in the manner provided in Title 70, chapter 30, against all nonaccepting landholders if:

- (a) acquisition of the property is necessary for successful reclamation;
 - (b) the acquired property after restoration or reclamation or after abatement, control, or prevention of the adverse effects of past mining practices will serve recreation and historic purposes or conservation and reclamation purposes or provide open space benefits; and
 - (c) (i) permanent facilities, such as treatment plants or relocated stream channels, will be constructed on the property for the restoration or reclamation of the property or for abatement, control, or prevention of the adverse effects of past mining practices; or
 - (ii) acquisition of refuse disposal sites and all refuse on the sites will serve the purposes of this part in that public ownership is desirable to meet emergency situations and prevent recurrences of the adverse effects of past mining practices.
- (4) The department may record in the office of the clerk and recorder in the county in which property that has been reclaimed pursuant to 82-4-424 or this section is located a notice that the property has been mined and reclaimed. The notice must include the date and a brief description of the reclamation."

Section 105. Section 82-4-406, MCA, is amended to read:

"82-4-406. Exemption -- opencut operations on federal and state lands. This part is not applicable to operations on certain federal and state lands as specified by the ~~board~~ department, provided it is first determined by the ~~board~~ department that laws, regulations, or rules administered or issued by the federal or state agency administering or having jurisdiction over the affected land impose controls for opencut operations on those lands equal to or greater than those imposed by this part."

Section 106. Section 82-4-422, MCA, is amended to read:

"82-4-422. Powers, duties, and functions. (1) The department has the powers, duties, and functions to:

- (a) issue permits when, on the basis of the information set forth in the application and an evaluation of

the proposed opencut operations, the department finds that the requirements of this part and rules adopted to implement this part will be observed;

- (b) amend permits in accordance with the provisions of 82-4-436;
- (c) reclaim any affected land with respect to which a bond has been forfeited;
- (d) make investigations or inspections that are considered necessary to ensure compliance with any provision of this part; and
- (e) enforce and administer the provisions of this part and issue orders necessary to implement the provisions of this part.

(2) The ~~board~~department shall:

- (a) adopt rules that pertain to opencut operations in order to accomplish the purposes of this part;
- (b) adopt rules:
 - (i) establishing uniform procedures for filing of necessary records;
 - (ii) providing procedures for the issuance of permits and filing of annual reports; and
 - (iii) providing other administrative requirements ~~that the board considers~~ necessary to implement this part; ~~and.~~

(3) The board shall conduct hearings and, for the purposes of conducting those hearings, administer oaths and affirmations, subpoena witnesses, compel attendance of witnesses, hear evidence, and require the production of any books, papers, correspondence, memoranda, agreements, documents, or other records relevant or material to the inquiry."

Section 107. Section 82-4-437, MCA, is amended to read:

"82-4-437. Annual report -- fees. (1) For each opencut operation, the operator shall file an annual report on a form furnished by the department. The report must contain the information and be submitted at times provided in rules of the ~~board~~department.

(2) (a) Except as provided in subsection (2)(b), each opencut operation shall submit with the annual report a fee of 4.5 cents per cubic yard of materials for all operations mined during the period covered by the report.

(b) Opencut operations that mine, extract, or produce bentonite are not subject to the fee in

subsection (2)(a).

(3) The department:

(a) shall require the operator to pay the following fees:

(i) \$1,500 for each permit application submitted pursuant to 82-4-432(1); and

(ii) for each amendment application submitted pursuant to 82-4-432(11):

(A) \$750 if the date of the amendment application is 10 years or less from the date of the permit approval; or

(B) \$1,500 if the date of the amendment application is more than 10 years from the date of the permit approval; and

(b) shall adopt rules for applications or responses that are administrative. Fees, if any, for administrative actions identified under this subsection (3) may not exceed \$250.

(4) Pursuant to the provisions of 82-4-441, a person who mines materials without a permit in violation of this part shall submit a report and the fees required by subsections (2)(a) and (3)(a)(i) of this section."

Section 108. Section 82-4-445, MCA, is amended to read:

"82-4-445. Reclamation of abandoned mine sites. (1) Agents, employees, or contractors of the department may enter upon property for the purpose of conducting studies or exploratory work to determine whether the property has been mined and not reclaimed and rehabilitated in accordance with the requirements of this part and to determine the feasibility of restoration or reclamation of the property or abatement, control, or prevention of the adverse effects of past mining practices. The department may bring an injunctive action to restrain interference with the exercise of the right to enter and inspect granted in this subsection.

(2) (a) The department may enter upon property pursuant to subsection (2)(b) if it makes a finding that:

(i) land or water resources on the property have been adversely affected by past mining practices;

(ii) the adverse effects are at a stage that, in the public interest, action to restore or reclaim the property or to abate, control, or prevent the adverse effects should be taken; and

(iii) the owners of the land or water resources where entry must be made to restore or reclaim the property or to abate, control, or prevent the adverse effects of past mining practices are not known or readily

available or the owners will not give permission for the department or its agents, employees, or contractors to enter upon the property to restore or reclaim the property or to abate, control, or prevent the adverse effects of past mining practices.

(b) If the department has made findings pursuant to subsection (2)(a), agents, employees, or contractors of the department may enter upon property adversely affected by past mining practices and other property necessary for access to the adversely affected property to do all things necessary or expedient to restore or reclaim the property or to abate, control, or prevent the adverse effects of past mining practices after:

- (i) giving notice by mail to the owner, if known, and a purchaser under contract for deed, if known; or
- (ii) if neither is known, posting notice upon the property and advertising in a newspaper of general circulation in the county in which the property lies.

(c) Entry upon property pursuant to this section is not an act of condemnation of property or of trespass but rather an exercise of the power granted by Article IX, sections 1 and 2, of the Montana constitution.

(3) The ~~board~~department may acquire the necessary property by gift or purchase, or if the property cannot be acquired by gift or purchase at a reasonable cost, proceedings may be instituted in the manner provided in Title 70, chapter 30, against all nonaccepting landholders if:

- (a) acquisition of the property is necessary for successful reclamation;
- (b) the acquired property after restoration or reclamation or after abatement, control, or prevention of the adverse effects of past mining practices will serve recreation and historic purposes or conservation and reclamation purposes or provide open space benefits; and
- (c) (i) permanent facilities, such as treatment plants or relocated stream channels, will be constructed on the property for the restoration or reclamation of the property or for abatement, control, or prevention of the adverse effects of past mining practices; or
- (ii) acquisition of refuse disposal sites and all refuse on the sites will serve the purposes of this part in that public ownership is desirable to meet emergency situations and prevent recurrences of the adverse effects of past mining practices.

(4) The department may record in the office of the clerk and recorder in the county in which property that has been reclaimed pursuant to 82-4-424 or this section is located a notice that the property has been

mined and reclaimed. The notice must include the date and a brief description of the reclamation."

Section 109. Section 82-4-1001, MCA, is amended to read:

"82-4-1001. Penalty factors. (1) In determining the amount of an administrative or civil penalty assessed under the statutes listed in subsection (4), the department of environmental quality or the district court, as appropriate, shall take into account the following factors:

- (a) the nature, extent, and gravity of the violation;
- (b) the circumstances of the violation;
- (c) the violator's prior history of any violation, which:
 - (i) must be a violation of a requirement under the authority of the same chapter and part as the violation for which the penalty is being assessed;
 - (ii) must be documented in an administrative order or a judicial order or judgment issued within 3 years prior to the date of the occurrence of the violation for which the penalty is being assessed; and
 - (iii) may not, at the time that the penalty is being assessed, be undergoing or subject to administrative appeal or judicial review;
- (d) the economic benefit or savings resulting from the violator's action;
- (e) the violator's good faith and cooperation;
- (f) the amounts voluntarily expended by the violator, beyond what is required by law or order, to address or mitigate the violation or impacts of the violation; and
- (g) other matters that justice may require.

(2) Except for penalties assessed under 82-4-254, after the amount of a penalty is determined under (1), the department of environmental quality or the district court, as appropriate, may consider the violator's financial ability to pay the penalty and may institute a payment schedule or suspend all or a portion of the penalty.

(3) Except for penalties assessed under 82-4-254, the department of environmental quality may accept a supplemental environmental project as mitigation for a portion of the penalty. For purposes of this section, a "supplemental environmental project" is an environmentally beneficial project that a violator agrees to undertake in settlement of an enforcement action but which the violator is not otherwise legally required to

perform.

(4) This section applies to penalties assessed by the department of environmental quality or the district court under 82-4-141, 82-4-254, 82-4-361, and 82-4-441.

(5) The ~~board of environmental review and the~~ department of environmental quality may, ~~for the statutes listed in subsection (4) for which each has rulemaking authority,~~ adopt rules to implement this section."

Section 110. Section 82-15-102, MCA, is amended to read:

"82-15-102. Enforcement of part -- rules. (1) Except as provided in subsection (2), this part must be enforced by the department. It may adopt necessary and reasonable rules for the implementation of the provisions and intent of this part, and those rules have the effect of law.

(2) Section 82-15-110(8) must be enforced by the department of environmental quality.

(3) The ~~board of environmental review~~ department of environmental quality shall adopt rules for the regulation of methyl tertiary butyl ether in accordance with this part. The rules must establish:

(a) a trace level or trace levels of methyl tertiary butyl ether that may be contained in gasoline that is imported into the state, stored, distributed, sold, offered or exposed for sale, or dispensed in the state of Montana. The ~~board~~ department of environmental quality shall establish trace levels in a manner that prevents the intentional addition of methyl tertiary butyl ether to gasoline but that allows for a residual amount of methyl tertiary butyl ether to remain in tanks following implementation of 82-15-110(8).

(b) reasonable sampling and reporting requirements; and

(c) requirements that the ~~board~~ department of environmental quality determines are reasonable and necessary for implementation of the portions of this part that apply to methyl tertiary butyl ether."

Section 111. Repealer. The following sections of the Montana Code Annotated are repealed:

75-6-103. Duties of board.

75-10-106. Duties of board.

82-4-111. Rules of board -- hearings.

82-4-204. Board rules.

Section 112. Transition. Rulemaking authority and existing rules under the jurisdiction of the board of environmental review are transferred to the department of environmental quality on [the effective date of this act].

Section 113. Effective date. [This act] is effective July 1, 2021.

- END -

I hereby certify that the within bill,
SB 233, originated in the Senate.

Secretary of the Senate

President of the Senate

Signed this _____ day
of _____, 2021.

Speaker of the House

Signed this _____ day
of _____, 2021.

SENATE BILL NO. 233
INTRODUCED BY D. ANKNEY

AN ACT GENERALLY REVISING LAWS RELATED TO THE BOARD OF ENVIRONMENTAL REVIEW; REASSIGNING DUTIES AND POWERS OF THE BOARD OF ENVIRONMENTAL REVIEW; TRANSFERRING RULEMAKING AUTHORITY; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTIONS 7-13-4502, 7-13-4513, 7-13-4517, 15-24-3001, 37-42-102, 37-42-321, 50-2-116, 50-79-401, 50-79-403, 75-1-220, 75-1-1001, 75-2-103, 75-2-104, 75-2-105, 75-2-111, 75-2-112, 75-2-201, 75-2-202, 75-2-203, 75-2-204, 75-2-206, 75-2-207, 75-2-211, 75-2-212, 75-2-213, 75-2-215, 75-2-217, 75-2-218, 75-2-219, 75-2-220, 75-2-221, 75-2-231, 75-2-234, 75-2-301, 75-2-302, 75-2-401, 75-2-402, 75-2-411, 75-2-421, 75-2-422, 75-2-425, 75-2-426, 75-2-428, 75-2-515, 75-5-103, 75-5-105, 75-5-106, 75-5-201, 75-5-202, 75-5-203, 75-5-222, 75-5-301, 75-5-302, 75-5-303, 75-5-304, 75-5-305, 75-5-307, 75-5-308, 75-5-310, 75-5-311, 75-5-312, 75-5-313, 75-5-314, 75-5-315, 75-5-316, 75-5-318, 75-5-401, 75-5-402, 75-5-403, 75-5-404, 75-5-502, 75-5-514, 75-5-515, 75-5-516, 75-5-611, 75-5-614, 75-5-621, 75-5-641, 75-5-702, 75-5-802, 75-6-102, 75-6-104, 75-6-105, 75-6-106, 75-6-107, 75-6-108, 75-6-109, 75-6-112, 75-6-113, 75-6-116, 75-6-121, 75-6-131, 75-10-103, 75-10-104, 75-10-112, 75-10-115, 75-10-203, 75-10-206, 75-10-221, 75-10-223, 75-10-224, 75-10-227, 75-10-403, 75-10-406, 75-10-408, 75-10-409, 75-10-413, 75-10-414, 75-10-417, 75-10-418, 75-10-424, 75-10-501, 75-10-515, 75-10-540, 75-10-714, 75-10-727, 75-10-732, 75-10-736, 75-10-1201, 75-10-1221, 75-10-1222, 75-11-203, 75-11-211, 75-11-218, 75-11-219, 75-11-223, 75-11-224, 75-11-503, 75-11-505, 75-11-508, 75-11-509, 75-11-512, 75-11-513, 75-11-516, 75-11-525, 75-20-104, 75-20-105, 75-20-201, 75-20-207, 75-20-208, 75-20-211, 75-20-215, 75-20-216, 75-20-219, 75-20-223, 75-20-301, 75-20-303, 75-20-304, 75-20-401, 75-20-406, 75-20-407, 75-20-410, 75-20-411, 75-20-1001, 75-20-1202, 75-20-1203, 75-20-1205, 75-26-301, 75-26-304, 76-3-622, 76-4-102, 76-4-108, 76-4-126, 76-4-1001, 80-15-102, 80-15-105, 80-15-110, 80-15-201, 82-4-102, 82-4-103, 82-4-112, 82-4-123, 82-4-129, 82-4-130, 82-4-203, 82-4-205, 82-4-206, 82-4-207, 82-4-223, 82-4-226, 82-4-227, 82-4-231, 82-4-232, 82-4-234, 82-4-235, 82-4-239, 82-4-251, 82-4-254, 82-4-303, 82-4-304, 82-4-305, 82-4-309, 82-4-321, 82-4-332, 82-4-335, 82-4-338, 82-4-339, 82-4-342, 82-4-353, 82-4-361, 82-4-362, 82-4-371, 82-4-403, 82-4-406, 82-4-422, 82-4-427, 82-4-437, 82-4-441, 82-4-442, 82-4-445, 82-4-1001, AND 82-15-102, AND 82-15-120, MCA; AND REPEALING SECTIONS 2-15-3502, 75-2-111, 75-6-103, 75-10-106, 82-4-111, AND 82-4-204, MCA; AND PROVIDING AN EFFECTIVE DATE.

Exported Data

Date	Action	Committee	Votes (Yes)	Votes (No)	Media
04/30/21	Chapter Number Assigned				
04/30/21	(S) Signed by Governor				
04/27/21	(S) Transmitted to Governor				
04/27/21	(H) Signed by Speaker				
04/27/21	(S) Signed by President				
04/23/21	(C) Printed - Enrolled Version Available				
04/23/21	(S) Returned from Enrolling				
04/13/21	(S) Sent to Enrolling				
04/12/21	(H) Returned to Senate				
04/12/21	(H) 3rd Reading Concurred		90	10	
04/12/21	(H) Scheduled for 3rd Reading				
04/09/21	(H) 2nd Reading Concurred		87	13	
04/09/21	(H) Scheduled for 2nd Reading				
04/06/21	(S) Revised Fiscal Note Printed				
04/01/21	(S) Revised Fiscal Note Received				
03/30/21	(H) Committee Report--Bill Concurred	(H) Natural Resources			
03/29/21	(H) Committee Executive Action--Bill Concurred	(H) Natural Resources	14	1	
03/29/21	(S) Revised Fiscal Note Requested				
03/26/21	(H) Hearing	(H) Natural Resources			
03/08/21	(H) First Reading				
03/02/21	(H) Referred to Committee	(H) Natural Resources			
03/02/21	(S) Transmitted to House				
03/02/21	(S) 3rd Reading Passed		49	0	
03/01/21	(S) Scheduled for 3rd Reading				
03/01/21	(S) 2nd Reading Passed		50	0	
03/01/21	(S) Scheduled for 2nd Reading				
02/25/21	(S) Committee Report--Bill Passed as Amended	(S) Natural Resources			
02/25/21	(C) Printed - New Version Available				
02/24/21	(S) Committee Executive Action--Bill Passed as Amended	(S) Natural Resources	12	0	
02/22/21	(S) Hearing	(S) Natural Resources			

Date	Action	Committee	Votes (Yes)	Votes (No)	Media
02/20/21	(C) Amendments Available				
02/18/21	(S) Fiscal Note Printed				
02/18/21	(S) Fiscal Note Received				
02/12/21	(S) Referred to Committee	(S) Natural Resources			
02/11/21	(C) Introduced Bill Text Available Electronically				
02/11/21	(S) First Reading				
02/11/21	(S) Fiscal Note Requested				
02/11/21	(S) Introduced				
02/11/21	(C) Draft Delivered to Requester				
02/11/21	(C) Draft Ready for Delivery				
02/11/21	(C) Executive Director Final Review				
02/11/21	(C) Draft Ready for Delivery				
02/10/21	(C) Draft in Assembly				
02/10/21	(C) Executive Director Review				
02/09/21	(C) Bill Draft Text Available Electronically				
02/09/21	(C) Draft in Final Drafter Review				
02/09/21	(C) Draft in Input/Proofing				
02/09/21	(C) Executive Director Review				
02/09/21	(C) Bill Draft Text Available Electronically				
02/09/21	(C) Draft in Final Drafter Review				
02/09/21	(C) Draft in Input/Proofing				
02/09/21	(C) Draft to Drafter - Edit Review				
02/09/21	(C) Draft in Edit				
02/08/21	(C) Draft in Legal Review				
02/08/21	(C) Draft Back for Redo				
01/20/21	(C) Draft Ready for Delivery				
01/19/21	(C) Executive Director Final Review				
01/19/21	(C) Draft Ready for Delivery				
01/19/21	(C) Draft in Assembly				
01/19/21	(C) Executive Director Review				
01/18/21	(C) Bill Draft Text Available Electronically				
01/18/21	(C) Draft in Final Drafter Review				
01/15/21	(C) Draft in Input/Proofing				

Date	Action	Committee	Votes (Yes)	Votes (No)	Media
01/10/21	(C) Draft to Drafter - Edit Review				
12/16/20	(C) Draft in Edit				
12/15/20	(C) Draft in Legal Review				
12/03/20	(C) Draft to Requester for Review				
01/16/20	(C) Draft Request Received				



GOVERNOR'S OFFICE OF
BUDGET AND PROGRAM PLANNING

Fiscal Note 2023 Biennium

Bill #	SB0233	Title:	Generally revise the board of environmental review
Primary Sponsor:	Ankney, Duane	Status:	As Introduced

- | | | |
|---|--|--|
| ☐ Significant Local Gov Impact | ☐ Needs to be included in HB 2 | ☒ Technical Concerns |
| ☐ Included in the Executive Budget | ☐ Significant Long-Term Impacts | ☐ Dedicated Revenue Form Attached |

FISCAL SUMMARY

	<u>FY 2022 Difference</u>	<u>FY 2023 Difference</u>	<u>FY 2024 Difference</u>	<u>FY 2025 Difference</u>
Expenditures:				
General Fund	(\$20,823)	(\$24,988)	(\$25,363)	(\$25,743)
Revenue:				
General Fund	\$0	\$0	\$0	\$0
Net Impact-General Fund Balance:	<u>\$20,823</u>	<u>\$24,988</u>	<u>\$25,363</u>	<u>\$25,743</u>

Description of fiscal impact: SB 233 eliminates the Board of Environmental Review (BER). The BER's expenses would be eliminated or absorbed by the Department of Environmental Quality in the existing budget.

FISCAL ANALYSIS

Assumptions:

Department of Environmental Quality (DEQ)

- The BER is funded 100% by the general fund.
- The average annual costs for the last seven years for the BER are \$24,988.
- Of these expenses, approximately 68% are paid to the Department of Justice to provide attorneys for rulemaking hearings. These functions would be performed by department staff and would be absorbed in existing budget because elimination of the board would eliminate a portion of existing staff workload.
- The remainder of the expenses are for BER travel to Helena and honoraria for BER meetings. These expenses would no longer be incurred.
- The BER holds six meetings per year. One BER meeting will occur in FY 2022 before the SB 233 becomes effective.
- Operating costs are inflated by 1.5% per year for FY 2024 and FY 2025.

	<u>FY 2022</u> <u>Difference</u>	<u>FY 2023</u> <u>Difference</u>	<u>FY 2024</u> <u>Difference</u>	<u>FY 2025</u> <u>Difference</u>
<u>Fiscal Impact:</u>				
<u>Expenditures:</u>				
Operating Expenses	(\$20,823)	(\$24,988)	(\$25,363)	(\$25,743)
TOTAL Expenditures	(\$20,823)	(\$24,988)	(\$25,363)	(\$25,743)
<u>Funding of Expenditures:</u>				
General Fund (01)	(\$20,823)	(\$24,988)	(\$25,363)	(\$25,743)
TOTAL Funding of Exp.	(\$20,823)	(\$24,988)	(\$25,363)	(\$25,743)
<u>Revenues:</u>				
General Fund (01)	\$0	\$0	\$0	\$0
TOTAL Revenues	\$0	\$0	\$0	\$0

Net Impact to Fund Balance (Revenue minus Funding of Expenditures):

General Fund (01)	\$20,823	\$24,988	\$25,363	\$25,743
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Technical Notes:

1. DEQ suggests implementing a phase out period to account for ongoing contested cases currently before the BER. For example, language could be added throughout relevant sections that ensure the BER would continue to exist while completing pending litigation, and the BER would be finally dissolved when the last case reaches judicial finality. Rulemakings and new appeals could be assigned to DEQ immediately upon effective date of the statute.
2. All current BER rules must be able to transition to DEQ rules upon the effective date. A clarifying statement in the bill text, stating that DEQ has authority to do so with a simple administrative change, which is not subject to full MAPA procedures, would be helpful.
3. Sections 50-79-401 and 403, MCA: For regulation of ionizing radiation and radioactive substances, the bill changes BER to "Department" to conduct administrative hearings for appeals and emergency orders. It is unclear whether "Department" means DEQ or DPHHS. DPHHS is defined as "department" in the introductory sections.
4. Section 75-1-220, MCA, includes requirements for Environmental Impact Statements. Currently, Section 75-1-220(2), MCA, includes the BER as an "appropriate board" under the Montana Environmental Policy Act. An appropriate board is required to make a recommendation to an agency regarding a disputed time extension, and to hear/resolve certain disputes between a project sponsor and an agency, among others. Section 10 of the proposed bill amends 75-1-220(2), MCA, by deleting the BER from the list. It does not replace the BER with DEQ. Thus, leaving no administrative body assigned to act as an appropriate board for DEQ MEPA matters, and potentially requiring DEQ to make recommendations to itself.
5. Section 75-5-313(2)(b), MCA, requires DEQ to recommend base numeric nutrient standards to the BER. Section 61 eliminates the BER from the paragraph but retains the duty for DEQ to make a recommendation. Therefore, this provision requires DEQ to make a recommendation to itself. DEQ suggests amending the proposed language to: "(b) The department shall consult with the nutrient work group prior to recommending adopting base numeric nutrient standards ~~to the board~~ and shall continue to consult with the nutrient work group in implementing 28 individual nutrient standards variances."
6. Section 82-4-422(2)(b)(iii), MCA: The bill suggests changing the language to: "providing other administrative requirements ~~that the board considers necessary~~ to implement this part;" As amended, it is unclear which

entity makes the determination as to what is “necessary.” DEQ suggests revising the proposed language to say: “providing other administrative requirements that the ~~board~~ department considers necessary...”

7. Section 82-4-427(5), MCA: The bill suggests changing the language to: “A petition for judicial review of a ~~board~~ department decision made pursuant to this section must be brought in the county in which the permitted activity is proposed to occur or . . .” DEQ suggests adding clarifying language as to what type of “department decision” may be appealed to judicial court since a department decision could be construed as the permitting decision (as it is elsewhere within this same section – the appeal section). Unlike BER decisions, DEQ permitting decisions may not be appealed directly to district court.

NO SPONSOR SIGNATURE

Sponsor's Initials

2/18

Date

KA

Budget Director's Initials

2/17/21

Date



GOVERNOR'S OFFICE OF
BUDGET AND PROGRAM PLANNING

Fiscal Note 2023 Biennium

Bill #	SB0233	Title:	Generally revise the board of environmental review
Primary Sponsor:	Ankney, Duane	Status:	As Amended in Senate Committee

- ☐ Significant Local Gov Impact
 ☐ Needs to be included in HB 2
 ☒ Technical Concerns
☐ Included in the Executive Budget
 ☐ Significant Long-Term Impacts
 ☐ Dedicated Revenue Form Attached

FISCAL SUMMARY

	<u>FY 2022 Difference</u>	<u>FY 2023 Difference</u>	<u>FY 2024 Difference</u>	<u>FY 2025 Difference</u>
Expenditures:				
General Fund	(\$1,894)	(\$1,894)	(\$1,894)	(\$1,894)
Revenue:				
General Fund	\$0	\$0	\$0	\$0
Net Impact-General Fund Balance:	<u>\$1,894</u>	<u>\$1,894</u>	<u>\$1,894</u>	<u>\$1,894</u>

Description of fiscal impact: As amended, SB 233 transfers all Board of Environmental Review (BER) rulemaking authority to the Department of Environmental Quality but would keep any contested case/appeal authority with the BER.

FISCAL ANALYSIS

Assumptions:

Department of Environmental Quality (DEQ)

- DEQ would develop rule packages and conduct public notice and comment using existing resources. The additional workload would be offset by a reduction in work as DEQ would no longer be required to present rule packages to the BER for approval.
- The BER is funded 100% by the general fund.
- The average annual costs for the last seven years for the BER are \$24,988. Of these expenses, approximately \$12,627 is for legal services, most of which are paid to the Department of Justice.
- An estimated 15% of the legal services costs are related to rulemaking. Under SB 233, these rulemaking responsibilities would be moved to DEQ, and the cost associated with BER rulemaking would be absorbed by DEQ.
- The remainder of the expenses are for BER travel to Helena and honoraria for BER meetings.

	<u>FY 2022</u> <u>Difference</u>	<u>FY 2023</u> <u>Difference</u>	<u>FY 2024</u> <u>Difference</u>	<u>FY 2025</u> <u>Difference</u>
<u>Fiscal Impact:</u>				
<u>Expenditures:</u>				
Operating Expenses	(\$1,894)	(\$1,894)	(\$1,894)	(\$1,894)
TOTAL Expenditures	(\$1,894)	(\$1,894)	(\$1,894)	(\$1,894)
<u>Funding of Expenditures:</u>				
General Fund (01)	(\$1,894)	(\$1,894)	(\$1,894)	(\$1,894)
TOTAL Funding of Exp.	(\$1,894)	(\$1,894)	(\$1,894)	(\$1,894)
<u>Revenues:</u>				
General Fund (01)	\$0	\$0	\$0	\$0
TOTAL Revenues	\$0	\$0	\$0	\$0
<u>Net Impact to Fund Balance (Revenue minus Funding of Expenditures):</u>				
General Fund (01)	\$1,894	\$1,894	\$1,894	\$1,894

Technical Notes:

1. Section 75-5-313(2)(b), MCA, requires DEQ to recommend base numeric nutrient standards to the BER. Section 61 eliminates the BER from the paragraph but retains the duty for DEQ to make a recommendation. Therefore, this provision requires DEQ to make a recommendation to itself. DEQ suggests amending the proposed language to: “(b) The department shall consult with the nutrient work group prior to recommending adopting base numeric nutrient standards ~~to the board~~ and shall continue to consult with the nutrient work group in implementing 28 individual nutrient standards variances.”
2. Section 82-4-422(2)(b)(iii), MCA: The bill suggests changing the language to: “providing other administrative requirements ~~that the board considers necessary~~ to implement this part;” As amended, it is unclear which entity makes the determination as to what is “necessary.” DEQ suggests revising the proposed language to say: “providing other administrative requirements that the ~~board~~ department considers necessary...”

NO SPONSOR SIGNATURE

Sponsor's Initials

Date

Budget Director's Initials

Date

SENATE BILL NO. 233

INTRODUCED BY D. ANKNEY

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATED TO THE BOARD OF ENVIRONMENTAL REVIEW; REASSIGNING DUTIES AND POWERS OF THE BOARD OF ENVIRONMENTAL REVIEW; TRANSFERRING RULEMAKING AUTHORITY; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTIONS 7-13-4502, 7-13-4513, 7-13-4517, ~~15-24-3001, 37-42-102, 37-42-321,~~ 50-2-116, ~~50-79-401, 50-79-403, 75-1-220,~~ 75-1-1001, ~~75-2-103, 75-2-104,~~ 75-2-105, 75-2-111, 75-2-112, 75-2-201, 75-2-202, 75-2-203, 75-2-204, 75-2-206, 75-2-207, 75-2-211, 75-2-212, ~~75-2-213,~~ 75-2-215, 75-2-217, 75-2-218, 75-2-219, 75-2-220, 75-2-221, 75-2-231, 75-2-234, 75-2-301, 75-2-302, ~~75-2-401, 75-2-402, 75-2-411, 75-2-421,~~ 75-2-422, ~~75-2-425, 75-2-426,~~ 75-2-428, ~~75-2-515,~~ 75-5-103, ~~75-5-105,~~ 75-5-106, 75-5-201, ~~75-5-202,~~ 75-5-203, 75-5-222, 75-5-301, 75-5-302, 75-5-303, 75-5-304, 75-5-305, 75-5-307, 75-5-308, 75-5-310, 75-5-311, 75-5-312, 75-5-313, ~~75-5-314,~~ 75-5-315, 75-5-316, 75-5-318, 75-5-401, 75-5-402, ~~75-5-403, 75-5-404,~~ 75-5-502, 75-5-514, 75-5-515, 75-5-516, ~~75-5-611, 75-5-614, 75-5-621, 75-5-641, 75-5-702,~~ 75-5-802, ~~75-6-102,~~ 75-6-104, 75-6-105, 75-6-106, 75-6-107, 75-6-108, ~~75-6-109,~~ 75-6-112, ~~75-6-113,~~ 75-6-116, 75-6-121, 75-6-131, ~~75-10-103,~~ 75-10-104, 75-10-112, 75-10-115, ~~75-10-203, 75-10-206,~~ 75-10-221, ~~75-10-223, 75-10-224, 75-10-227, 75-10-403, 75-10-406, 75-10-408, 75-10-409, 75-10-413, 75-10-414, 75-10-417, 75-10-418,~~ 75-10-424, 75-10-501, ~~75-10-515, 75-10-540, 75-10-714, 75-10-727, 75-10-732, 75-10-736, 75-10-1201, 75-10-1221, 75-10-1222,~~ 75-11-203, 75-11-211, 75-11-218, 75-11-219, 75-11-223, 75-11-224, ~~75-11-503,~~ 75-11-505, 75-11-508, ~~75-11-509, 75-11-512, 75-11-513, 75-11-516, 75-11-525, 75-20-104,~~ 75-20-105, ~~75-20-201, 75-20-207, 75-20-208, 75-20-211, 75-20-215, 75-20-216, 75-20-219, 75-20-223, 75-20-301, 75-20-303, 75-20-304, 75-20-401,~~ 75-20-406, 75-20-407, ~~75-20-410, 75-20-411,~~ 75-20-1001, ~~75-20-1202,~~ 75-20-1203, 75-20-1205, ~~75-26-301, 75-26-304,~~ 76-3-622, ~~76-4-102, 76-4-108, 76-4-126,~~ 76-4-1001, ~~80-15-102,~~ 80-15-105, 80-15-110, 80-15-201, 82-4-102, ~~82-4-103,~~ 82-4-112, 82-4-123, 82-4-129, ~~82-4-130, 82-4-203,~~ 82-4-205, ~~82-4-206,~~ 82-4-207, 82-4-223, 82-4-226, ~~82-4-227,~~ 82-4-231, 82-4-232, 82-4-234, 82-4-235, 82-4-239, ~~82-4-251,~~ 82-4-254, ~~82-4-303,~~ 82-4-304, ~~82-4-305,~~ 82-4-309, 82-4-321, 82-4-332, 82-4-335, 82-4-338, 82-4-339, 82-4-342, ~~82-4-353, 82-4-361, 82-4-362,~~ 82-4-371, ~~82-4-403,~~ 82-4-406, 82-4-422, ~~82-4-427,~~ 82-4-437, ~~82-4-441, 82-4-~~

1 ~~442, 82-4-445, 82-4-1001, AND 82-15-102, AND 82-15-120, MCA; AND REPEALING SECTIONS 2-15-3502,~~
2 ~~75-2-111, 75-6-103, 75-10-106, 82-4-111, AND 82-4-204, MCA; AND PROVIDING AN EFFECTIVE DATE.~~"

3

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

5

6 **Section 1.** Section 7-13-4502, MCA, is amended to read:

7 **"7-13-4502. Definitions.** As used in this part, unless the context indicates otherwise, the following
8 definitions apply:

9 (1) "Board of directors" means the board of directors provided for in 7-13-4516 or a joint board of
10 directors provided for in 7-13-4527.

11 ~~(2) "Board of environmental review" means the board of environmental review as provided in 2-15-~~
12 ~~3502-~~

13 ~~(3)(2)~~ (2) "Commissioners" means the board of county commissioners or the governing body of a city-
14 county consolidated government.

15 (3) "Department" means the department of environmental quality provided for in 2-15-3501.

16 (4) "Family residential unit" means a single-family dwelling.

17 (5) "Fee-assessed units" means all real property with improvements, including taxable and tax-
18 exempt property as shown on the property assessment records maintained by the county, and mobile homes
19 and manufactured homes as defined in 15-24-201.

20 (6) "Local water quality district" means an area established with definite boundaries for the purpose of
21 protecting, preserving, and improving the quality of surface water and ground water in the district as authorized
22 by this part."

23

24 **Section 2.** Section 7-13-4513, MCA, is amended to read:

25 **"7-13-4513. Insufficient protest to bar proceedings -- resolution creating district -- power to**
26 **implement local water quality program.** (1) The commissioners may create a local water quality district,
27 establish fees, and appoint a board of directors if the commissioners find that insufficient protests have been
28 made in accordance with 7-13-4511 or if the registered voters who reside in the proposed district have

1 approved a referendum as provided in 7-13-4512.

2 (2) To create a local water quality district, the commissioners shall pass a resolution in accordance
3 with the resolution of intention introduced and passed by the commissioners or in accordance with the terms of
4 the referendum.

5 (3) The commissioners and board of directors may implement a local water quality program after the
6 program is approved by the ~~board of environmental review~~ department pursuant to 75-5-311."

7

8 **Section 3.** Section 7-13-4517, MCA, is amended to read:

9 **"7-13-4517. Powers and duties of board of directors.** The board of directors of a local water quality
10 district, with the approval of the commissioners, may:

11 (1) develop a local water quality program, to be submitted to the ~~board of environmental review~~
12 department, for the protection, preservation, and improvement of the quality of surface water and ground water
13 in the district. In developing the program, the board of directors shall consult with the board or boards of
14 supervisors of conservation districts, established as provided in 76-15-201, whose geographical area of
15 jurisdiction is included within the boundaries of the local water quality district.

16 (2) implement a local water quality program;

17 (3) administer the budget of the local water quality district;

18 (4) employ personnel;

19 (5) purchase, rent, or lease equipment and material necessary to develop and implement an effective
20 program;

21 (6) cooperate or contract with any corporation, association, individual, or group of individuals,
22 including any agency of the federal, state, or local government, in order to develop and implement an effective
23 program;

24 (7) receive gifts, grants, or donations for the purpose of advancing the program and acquire, by gift,
25 deed, or purchase, land necessary to implement the local water quality program;

26 (8) administer local ordinances that are adopted by the commissioners and governing bodies of the
27 participating cities and towns and that pertain to the protection, preservation, and improvement of the quality of
28 surface water and ground water;

(9) apply for and receive from the federal government or the state government, on behalf of the local water quality district, money to aid the local water quality program;

(10) borrow money for assistance in planning or refinancing a local water quality district and repay loans with the money received from the established fees; and

(11) construct facilities that cost not more than \$5,000 and maintain facilities necessary to accomplish the purposes of the district, including but not limited to facilities for removal of water-borne contaminants; water quality improvement; sanitary sewage collection, disposal, and treatment; and storm water or surface water drainage collection, disposal, and treatment."

Section 4. ~~Section 15-24-3001, MCA, is amended to read:~~

~~"15-24-3001. —Electrical generation and transmission facility exemption—definitions. (1) (a) Except as provided in subsections (1)(b) and (3), an electrical generation facility and related delivery facilities constructed in the state of Montana after May 5, 2001, and before January 1, 2006, may be exempt from property taxation for a 10-year period beginning on the date that an owner or operator of an electrical generation facility and related delivery facilities commences to construct the facility as defined in 75-20-104(6)(a) and (6)(b) 75-20-104(5)(a) and (5)(b). In order to be exempt from property taxation, an owner and operator of an electrical generation facility and related delivery facilities shall offer contracts to sell 50% of that facility's net generating output at a cost-based rate, which includes a rate of return not to exceed 12%, to customers for a 20-year period from the date of the facility's completion.~~

~~(b) The property tax exemption allowed under subsection (1)(a) is limited to a 5-year period for generation facilities powered by oil or gas turbines.~~

~~(2) To the extent that 50% of the net generating output of the facility is not contracted for delivery to consumers for a contract term extending 5 years to 20 years from the completion of the facility, as determined by the owner, surplus capacity must be offered on a declining contract term basis for the remainder of the contract period at a cost-based rate that includes a rate of return not to exceed 12%. Surplus capacity that is not contracted for in this fashion may be sold at market rates.~~

~~(3) (a) Except as provided in subsection (3)(c), if an owner or operator of property exempt from taxation under subsection (1)(a) signs a contract to sell power as required in subsection (1) and then fails to perform the contract during the first 10-year period, the 10-year property tax exemption in subsection (1) is void~~

1 ~~and the property is subject to a rollback tax as provided in 15-24-3002.~~

2 ~~(b)—Except as provided in subsection (3)(c), if an owner or operator of property exempt from taxation~~
3 ~~under subsection (1)(b) signs a contract to sell power as required in subsection (1) and then fails to perform the~~
4 ~~contract during the first 5-year period, the 5-year property tax exemption in subsection (1) is void and the~~
5 ~~property is subject to a rollback tax as provided in 15-24-3002.~~

6 ~~(c)—If an owner or operator fails to perform the contract due to earthquakes or other acts of God, theft,~~
7 ~~sabotage, acts of war, other social instabilities, or equipment failure, the property tax exemption in subsection~~
8 ~~(1)(a) or (1)(b) is not void and the owner or operator is not subject to the rollback tax as provided in 15-24-3002.~~

9 ~~(4)—For the purposes of this section, the following definitions apply:~~

10 ~~(a)—(i) "Electrical generation facility" means any combination of a physically connected generator or~~
11 ~~generators, associated prime movers, and other associated property, including appurtenant land and~~
12 ~~improvements and personal property, that are normally operated together to produce 20 average megawatts or~~
13 ~~more of electric power. The term is limited to generating facilities that produce electricity from coal-fired steam~~
14 ~~turbines, oil or gas turbines, or turbine generators that are driven by falling water.~~

15 ~~(ii) The term does not include:~~

16 ~~(A)—electrical generation facilities used for noncommercial purposes or exclusively for agricultural~~
17 ~~purposes; or~~

18 ~~(B)—a qualifying small power production facility, as that term is defined in 16 U.S.C. 796(17), that is~~
19 ~~owned and operated by a person not primarily engaged in the generation or sale of electricity other than electric~~
20 ~~power from a small power production facility and that is classified under 15-6-134 and 15-6-138.~~

21 ~~(b)—"Related delivery facilities" means transmission facilities necessary to deliver the energy from the~~
22 ~~electrical generation facility to the existing network transmission system.~~

23 ~~(c)—"Surplus capacity" means that portion of the 50% of net generating output not contracted for use.~~

24 ~~(5)—The department shall appraise exempt electrical generation facilities for each year that the~~
25 ~~property is exempt and determine the taxable value of the property as if it were subject to property taxation."~~

26
27 **Section 5.** Section 37-42-102, MCA, is amended to read:

28 **"37-42-102. Definitions.** Unless the context requires otherwise, in this chapter, the following

1 ~~definitions apply:~~

2
3 ~~(1) "Board" means the board of environmental review provided for in 2-15-3502.~~

4 ~~(2)(1) "Certificate" means a certificate of competency issued by the department, stating that the~~
5 ~~operator holding the certificate has met the requirements for the specified operator classification of the~~
6 ~~certification program.~~

7 ~~(3)(2) "Community water system" means a public water supply system that serves at least 15 service~~
8 ~~connections used by year-round residents or that regularly serves at least 25 year-round residents.~~

9 ~~(4)(3) "Council" means the water and wastewater operators' advisory council provided for in 2-15-~~
10 ~~2105.~~

11 ~~(5)(4) "Department" means the department of environmental quality provided for in 2-15-3501.~~

12 ~~(6)(5) "Industrial waste" means any waste substance from the processes of business or industry or~~
13 ~~from the development of a natural resource, together with any sewage that may be present.~~

14 ~~(7)(6) "Industrial waste discharge system" means a system that discharges industrial waste into state~~
15 ~~waters.~~

16 ~~(8)(7) "Nontransient noncommunity water system" means a public water system, as defined in 75-6-~~
17 ~~202, that is not a community system and that regularly serves at least 25 of the same persons for at least 6~~
18 ~~months a year.~~

19 ~~(9)(8) "Operator" means the person in direct responsible charge of the operation of a water treatment~~
20 ~~plant, water distribution system, or wastewater treatment plant.~~

21 ~~(10)(9) "State waters" means the term as defined in 75-6-102.~~

22 ~~(11)(10) "Wastewater treatment plant" means a facility that:~~

23 ~~(a) is designed to remove solids, bacteria, or other harmful constituents of sewage, industrial waste,~~
24 ~~or other wastes; and~~

25 ~~(b) is part of either an industrial waste discharge system or a public sewage system as defined in 75-~~
26 ~~6-102.~~

27 ~~(12)(11) "Water distribution system" means that portion of the water supply system that conveys water~~
28 ~~from the water treatment plant or other supply source to the premises of the consumer and that is part of a~~

~~community water system or a nontransient noncommunity water system.~~

~~(13)(12) "Water supply system" means a system of pipes, structures, and facilities through which water is obtained, treated, sold, distributed, or otherwise offered to the public for household use or use by humans and that is part of a community water system or a nontransient noncommunity water system.~~

~~(14)(13) "Water treatment plant" means that portion of the water supply system that alters either the physical, chemical, or bacteriological quality of the water and renders it safe and palatable for human use."~~

Section 6. Section 37-42-321, MCA, is amended to read:

~~"37-42-321. Revocation of operator's certificate—disciplinary action by department. (1) The department may issue an order revoking the certificate of an operator when the department finds that:~~

~~(a) the operator has practiced fraud or deception;~~

~~(b) reasonable care, judgment, or the application of the operator's knowledge or ability was not used in the performance of the operator's duties; or~~

~~(c) the operator is incompetent or unable to properly perform the operator's duties.~~

~~(2) The department may issue an order taking any disciplinary action listed in 37-1-136.~~

~~(3) A person aggrieved by an order of the department under this section may request a hearing before the board department by submitting a written request stating the reason for the request within 30 days after receipt of the department's decision.~~

~~(4) The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing held under this section."~~

Section 5. Section 50-2-116, MCA, is amended to read:

"50-2-116. Powers and duties of local boards of health. (1) In order to carry out the purposes of the public health system, in collaboration with federal, state, and local partners, each local board of health shall:

(a) appoint and fix the salary of a local health officer who is:

(i) a physician;

(ii) a person with a master's degree in public health; or

(iii) a person with equivalent education and experience, as determined by the department;

- 1 (b) elect a presiding officer and other necessary officers;
- 2 (c) employ qualified staff;
- 3 (d) adopt bylaws to govern meetings;
- 4 (e) hold regular meetings at least quarterly and hold special meetings as necessary;
- 5 (f) identify, assess, prevent, and ameliorate conditions of public health importance through:
 - 6 (i) epidemiological tracking and investigation;
 - 7 (ii) screening and testing;
 - 8 (iii) isolation and quarantine measures;
 - 9 (iv) diagnosis, treatment, and case management;
 - 10 (v) abatement of public health nuisances;
 - 11 (vi) inspections;
 - 12 (vii) collecting and maintaining health information;
 - 13 (viii) education and training of health professionals; or
 - 14 (ix) other public health measures as allowed by law;
- 15 (g) protect the public from the introduction and spread of communicable disease or other conditions of
16 public health importance, including through actions to ensure the removal of filth or other contaminants that
17 might cause disease or adversely affect public health;
- 18 (h) supervise or make inspections for conditions of public health importance and issue written orders
19 for compliance or for correction, destruction, or removal of the conditions;
- 20 (i) bring and pursue actions and issue orders necessary to abate, restrain, or prosecute the violation
21 of public health laws, rules, and local regulations;
- 22 (j) identify to the department an administrative liaison for public health. The liaison must be the local
23 health officer in jurisdictions that employ a full-time local health officer. In jurisdictions that do not employ a full-
24 time local health officer, the liaison must be the highest ranking public health professional employed by the
25 jurisdiction.
- 26 (k) subject to the provisions of 50-2-130, adopt necessary regulations that are not less stringent than
27 state standards for the control and disposal of sewage from private and public buildings and facilities that are
28 not regulated by Title 75, chapter 6, or Title 76, chapter 4. The regulations must describe standards for granting

1 variances from the minimum requirements that are identical to standards promulgated by the ~~board of~~
2 ~~environmental review~~ department of environmental quality and must provide for appeal of variance decisions to
3 the department of environmental quality as required by 75-5-305. If the local board of health regulates or
4 permits water well drilling, the regulations must prohibit the drilling of a well if the well isolation zone, as defined
5 in 76-4-102, encroaches onto adjacent private property without the authorization of the private property owner.

6 (2) Local boards of health may:

7 (a) accept and spend funds received from a federal agency, the state, a school district, or other
8 persons or entities;

9 (b) adopt necessary fees to administer regulations for the control and disposal of sewage from private
10 and public buildings and facilities;

11 (c) adopt regulations that do not conflict with 50-50-126 or rules adopted by the department:

12 (i) for the control of communicable diseases;

13 (ii) for the removal of filth that might cause disease or adversely affect public health;

14 (iii) subject to the provisions of 50-2-130, for sanitation in public and private buildings and facilities that
15 affects public health and for the maintenance of sewage treatment systems that do not discharge effluent
16 directly into state water and that are not required to have an operating permit as required by rules adopted
17 under 75-5-401;

18 (iv) subject to the provisions of 50-2-130 and Title 50, chapter 48, for tattooing and body-piercing
19 establishments and that are not less stringent than state standards for tattooing and body-piercing
20 establishments;

21 (v) for the establishment of institutional controls that have been selected or approved by the:

22 (A) United States environmental protection agency as part of a remedy for a facility under the federal
23 Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9601, et seq.; or

24 (B) department of environmental quality as part of a remedy for a facility under the Montana
25 Comprehensive Environmental Cleanup and Responsibility Act, Title 75, chapter 10, part 7; and

26 (vi) to implement the public health laws; and

27 (d) promote cooperation and formal collaborative agreements between the local board of health and
28 tribes, tribal organizations, and the Indian health service regarding public health planning, priority setting,

1 information and data sharing, reporting, resource allocation, service delivery, jurisdiction, and other matters
2 addressed in this title.

3 (3) A local board of health may provide, implement, facilitate, or encourage other public health
4 services and functions as considered reasonable and necessary."
5

6 **Section 8.** Section 50-79-401, MCA, is amended to read:

7 ~~"50-79-401.—Administrative hearings. In a proceeding under this chapter for granting, suspending,~~
8 ~~revoking, or amending a license or for determining compliance with or granting exceptions from rules adopted~~
9 ~~under this chapter, the board of environmental review department shall first afford an opportunity for a hearing~~
10 ~~on the record upon the request of a person whose interest may be affected by the proceeding and shall admit~~
11 ~~the person as a party to the proceeding."~~
12

13 **Section 9.** Section 50-79-403, MCA, is amended to read:

14 ~~"50-79-403.—Emergency orders and rules. When the department finds that an emergency exists~~
15 ~~requiring immediate action to protect the public health and safety, the department may, without notice or~~
16 ~~hearing, issue a rule or order reciting the existence of the emergency and requiring that such action be taken as~~
17 ~~considered necessary to meet the emergency. Notwithstanding any provision of this chapter to the contrary, the~~
18 ~~rule or order is effective immediately. A person to whom the rule or order is directed shall comply with it~~
19 ~~immediately but on application to the board shall department must be afforded a prompt hearing. On the basis~~
20 ~~of the hearing the emergency rule or order shall must be continued, modified, or revoked by the board~~
21 ~~department within 30 days after the hearing or when the emergency no longer exists."~~
22

23 **Section 10.** Section 75-1-220, MCA, is amended to read:

24 ~~"75-1-220.—Definitions. For the purposes of this part, the following definitions apply:~~

25 (1) ~~"Alternatives analysis" means an evaluation of different parameters, mitigation measures, or~~
26 ~~control measures that would accomplish the same objectives as those included in the proposed action by the~~
27 ~~applicant. For a project that is not a state-sponsored project, it does not include an alternative facility or an~~
28 ~~alternative to the proposed project itself. The term includes alternatives required pursuant to Title 75, chapter~~

20.

(2) ~~"Appropriate board" means, for administrative actions taken under this part by the:~~

(a) ~~department of environmental quality, the board of environmental review, as provided for in 2-15-~~

3502;

(b)(a) ~~department of fish, wildlife, and parks, the fish and wildlife commission, as provided for in 2-15-~~

3402, and the state parks and recreation board, as provided for in 2-15-3406;

(c)(b) ~~department of transportation, the transportation commission, as provided for in 2-15-2502;~~

(d)(c) ~~department of natural resources and conservation for state trust land issues, the board of land commissioners, as provided for in Article X, section 4, of the Montana constitution;~~

(e)(d) ~~department of natural resources and conservation for oil and gas issues, the board of oil and gas conservation, as provided for in 2-15-3303; and~~

(f)(e) ~~department of livestock, the board of livestock, as provided for in 2-15-3102.~~

(3) ~~"Complete application" means, for the purpose of complying with this part, an application for a permit, license, or other authorization that contains all data, studies, plans, information, forms, fees, and signatures required to be included with the application sufficient for the agency to approve the application under the applicable statutes and rules.~~

(4) ~~"Cumulative impacts" means the collective impacts on the human environment within the borders of Montana of the proposed action when considered in conjunction with other past, present, and future actions related to the proposed action by location or generic type.~~

(5) ~~"Environmental review" means any environmental assessment, environmental impact statement, or other written analysis required under this part by a state agency of a proposed action to determine, examine, or document the effects and impacts of the proposed action on the quality of the human and physical environment within the borders of Montana as required under this part.~~

(6) ~~"Project sponsor" means any applicant, owner, operator, agency, or other entity that is proposing an action that requires an environmental review. If the action involves state agency-initiated actions on state trust lands, the term also includes each institutional beneficiary of any trust as described in The Enabling Act of Congress, approved February 22, 1899, 25 Stat. 676, as amended, the Morrill Act of 1862, 7 U.S.C. 301 through 308, and the Morrill Act of 1890, 7 U.S.C. 321 through 329.~~

~~(7) "Public scoping process" means any process to determine the scope of an environmental review.~~

~~(8) (a) "State-sponsored project" means:~~

~~(i) a project, program, or activity initiated and directly undertaken by a state agency;~~

~~(ii) except as provided in subsection (8)(b)(i), a project or activity supported through a contract, grant, subsidy, loan, or other form of funding assistance from a state agency, either singly or in combination with one or more other state agencies; or~~

~~(iii) except as provided in subsection (8)(b)(i), a project or activity authorized by a state agency acting in a land management capacity for a lease, easement, license, or other authorization to act.~~

~~(b) The term does not include:~~

~~(i) a project or activity undertaken by a private entity that is made possible by the issuance of permits, licenses, leases, easements, grants, loans, or other authorizations to act by the:~~

~~(A) department of environmental quality pursuant to Titles 75, 76, or 82;~~

~~(B) department of fish, wildlife, and parks pursuant to Title 87, chapter 4, part 4;~~

~~(C) board of oil and gas conservation pursuant to Title 82, chapter 11; or~~

~~(D) department of natural resources and conservation or the board of land commissioners pursuant to Titles 76, 77, 82, and 85; or~~

~~(ii) a project or activity involving the issuance of a permit, license, certificate, or other entitlement for permission to act by another agency acting in a regulatory capacity, either singly or in combination with other state agencies."~~

Section 6. Section 75-1-1001, MCA, is amended to read:

"75-1-1001. Penalty factors. (1) In determining the amount of an administrative or civil penalty to which subsection (4) applies, the department of environmental quality or the district court, as appropriate, shall take into account the following factors:

- (a) the nature, extent, and gravity of the violation;
- (b) the circumstances of the violation;
- (c) the violator's prior history of any violation, which:
 - (i) must be a violation of a requirement under the authority of the same chapter and part as the

- 1 violation for which the penalty is being assessed;
- 2 (ii) must be documented in an administrative order or a judicial order or judgment issued within 3 years
- 3 prior to the date of the occurrence of the violation for which the penalty is being assessed; and
- 4 (iii) may not, at the time that the penalty is being assessed, be undergoing or subject to administrative
- 5 appeal or judicial review;
- 6 (d) the economic benefit or savings resulting from the violator's action;
- 7 (e) the violator's good faith and cooperation;
- 8 (f) the amounts voluntarily expended by the violator, beyond what is required by law or order, to
- 9 address or mitigate the violation or impacts of the violation; and
- 10 (g) other matters that justice may require.
- 11 (2) After the amount of a penalty is determined under subsection (1), the department of environmental
- 12 quality or the district court, as appropriate, may consider the violator's financial ability to pay the penalty and
- 13 may institute a payment schedule or suspend all or a portion of the penalty.
- 14 (3) The department of environmental quality may accept a supplemental environmental project as
- 15 mitigation for a portion of the penalty. For purposes of this section, a "supplemental environmental project" is an
- 16 environmentally beneficial project that a violator agrees to undertake in settlement of an enforcement action but
- 17 which the violator is not otherwise legally required to perform.
- 18 (4) This section applies to penalties assessed by the department of environmental quality or the
- 19 district court under Title 75, chapters 2, 5, 6, 8, 11, and 20; Title 75, chapter 10, parts 2, 4, 5, and 12; and Title
- 20 76, chapter 4.
- 21 (5) The board of environmental review and the department of environmental quality may, for the
- 22 statutes listed in subsection (4) for which each has rulemaking authority, adopt rules to implement this section."
- 23

24 ~~Section 12. Section 75-2-103, MCA, is amended to read:~~

25 ~~"75-2-103. Definitions. Unless the context requires otherwise, in this chapter, the following definitions~~
26 ~~apply:~~

27 ~~(1) "Air contaminant" means dust, fumes, mist, smoke, other particulate matter, vapor, gas, odorous~~
28 ~~substances, or any combination of those air contaminants.~~

~~(2) "Air pollutants" means one or more air contaminants that are present in the outdoor atmosphere, including those pollutants regulated pursuant to section 7412 and Subchapter V of the federal Clean Air Act, 42 U.S.C. 7401, et seq.~~

~~(3) "Air pollution" means the presence of air pollutants in a quantity and for a duration that are or tend to be injurious to human health or welfare, animal or plant life, or property or that would unreasonably interfere with the enjoyment of life, property, or the conduct of business.~~

~~(4) "Associated supporting infrastructure" means:~~

~~(a) electric transmission and distribution facilities;~~

~~(b) pipeline facilities;~~

~~(c) aboveground ponds and reservoirs and underground storage reservoirs;~~

~~(d) rail transportation;~~

~~(e) aqueducts and diversion dams;~~

~~(f) devices or equipment associated with the delivery of an energy form or product produced at an energy development project; or~~

~~(g) other supporting infrastructure, as defined by board department rule, that is necessary for an energy development project.~~

~~(5) "Board" means the board of environmental review provided for in 2-15-3502.~~

~~(6)(5) (a) "Commercial hazardous waste incinerator" means:~~

~~(i) an incinerator that burns hazardous waste; or~~

~~(ii) a boiler or industrial furnace subject to the provisions of 75-10-406.~~

~~(b) Commercial hazardous waste incinerator does not include a research and development facility that receives federal or state research funds and that burns hazardous waste primarily to test and evaluate waste treatment remediation technologies.~~

~~(7)(6) "Department" means the department of environmental quality provided for in 2-15-3501.~~

~~(8)(7) "Emission" means a release into the outdoor atmosphere of air contaminants.~~

~~(9)(8) (a) "Energy development project" means each plant, unit, or other development and associated developments, including any associated supporting infrastructure, designed for or capable of:~~

~~(i) generating electricity;~~

~~(ii) producing gas derived from coal;~~

~~(iii) producing liquid hydrocarbon products;~~

~~(iv) refining crude oil or natural gas;~~

~~(v) producing alcohol to be blended for ethanol-blended gasoline and that are eligible for a tax incentive pursuant to Title 15, chapter 70, part 5;~~

~~(vi) producing biodiesel and that are eligible for a tax incentive for the production of biodiesel pursuant to 15-32-701; or~~

~~(vii) transmitting electricity through an electric transmission line with a design capacity of equal to or greater than 50 kilovolts.~~

~~(b) The term does not include a nuclear facility as defined in 75-20-1202.~~

~~(10)(9) "Environmental protection law" means a law contained in or an administrative rule adopted pursuant to Title 75, chapter 2, 5, 10, or 11.~~

~~(11)(10) "Hazardous waste" means:~~

~~(a) a substance defined as hazardous under 75-10-403 or defined as hazardous in department administrative rules adopted pursuant to Title 75, chapter 10, part 4; or~~

~~(b) a waste containing 2 parts or more per million of polychlorinated biphenyl (PCB).~~

~~(12)(11) (a) "Incinerator" means any single or multiple chambered combustion device that burns combustible material, alone or with a supplemental fuel or with catalytic combustion assistance, primarily for the purpose of removal, destruction, disposal, or volume reduction of any portion of the input material.~~

~~(b) Incinerator does not include:~~

~~(i) safety flares used to combust or dispose of hazardous or toxic gases at industrial facilities, such as refineries, gas sweetening plants, oil and gas wells, sulfur recovery plants, or elemental phosphorus plants;~~

~~(ii) space heaters that burn used oil;~~

~~(iii) wood-fired boilers; or~~

~~(iv) wood waste burners, such as tepee, wigwam, truncated cone, or silo burners.~~

~~(13)(12) "Medical waste" means any waste that is generated in the diagnosis, treatment, or immunization of human beings or animals, in medical research on humans or animals, or in the production or testing of biologicals. The term includes:~~

- 1 ~~(a) — cultures and stocks of infectious agents;~~
2 ~~(b) — human pathological wastes;~~
3 ~~(c) — waste human blood or products of human blood;~~
4 ~~(d) — sharps;~~
5 ~~(e) — contaminated animal carcasses, body parts, and bedding that were known to have been exposed~~
6 ~~to infectious agents during research;~~
7 ~~(f) — laboratory wastes and wastes from autopsy or surgery that were in contact with infectious agents;~~
8 ~~and~~
9 ~~(g) — biological waste and discarded material contaminated with blood, excretion, exudates, or~~
10 ~~secretions from humans or animals.~~
11 ~~(14)(13) (a) "Oil or gas well facility" means a well that produces oil or natural gas. The term includes:~~
12 ~~(i) — equipment associated with the well and used for the purpose of producing, treating, separating, or~~
13 ~~storing oil, natural gas, or other liquids produced by the well; and~~
14 ~~(ii) — a group of wells under common ownership or control that produce oil or natural gas and that share~~
15 ~~common equipment used for the purpose of producing, treating, separating, or storing oil, natural gas, or other~~
16 ~~liquids produced by the wells.~~
17 ~~(b) — The equipment referred to in subsection (14)(a) (13)(a) includes but is not limited to wellhead~~
18 ~~assemblies, amine units, prime mover engines, phase separators, heater treater units, dehydrator units, tanks,~~
19 ~~and connecting tubing.~~
20 ~~(c) — The term does not include equipment such as compressor engines used for transmission of oil or~~
21 ~~natural gas.~~
22 ~~(15)(14) "Person" means an individual, a partnership, a firm, an association, a municipality, a public or~~
23 ~~private corporation, the state or a subdivision or agency of the state, a trust, an estate, an interstate body, the~~
24 ~~federal government or an agency of the federal government, or any other legal entity and includes persons~~
25 ~~resident in Canada.~~
26 ~~(16)(15) "Principal" means a principal of a corporation, including but not limited to a partner, associate,~~
27 ~~officer, parent corporation, or subsidiary corporation.~~
28 ~~(17)(16) "Small business stationary source" means a stationary source that:~~

~~(a) is owned or operated by a person who employs 100 or fewer individuals;~~

~~(b) is a small business concern as defined in the Small Business Act, 15 U.S.C. 631, et seq.;~~

~~(c) is not a major stationary source as defined in Subchapter V of the federal Clean Air Act, 42 U.S.C.~~

~~7661, et seq.;~~

~~(d) emits less than 50 tons per year of an air pollutant;~~

~~(e) emits less than a total of 75 tons per year of all air pollutants combined; and~~

~~(f) is not excluded from this definition under 75-2-108(3).~~

~~(18) (17) (a) "Solid waste" means all putrescible and nonputrescible solid, semisolid, liquid, or gaseous wastes, including but not limited to garbage; rubbish; refuse; ashes; swill; food wastes; commercial or industrial wastes; medical waste; sludge from sewage treatment plants, water supply treatment plants, or air pollution control facilities; construction, demolition, or salvage wastes; dead animals, dead animal parts, offal, animal droppings, or litter; discarded home and industrial appliances; automobile bodies, tires, interiors, or parts thereof; wood products or wood byproducts and inert materials; styrofoam and other plastics; rubber materials; asphalt shingles; tarpaper; electrical equipment, transformers, or insulated wire; oil or petroleum products or oil or petroleum products and inert materials; treated lumber and timbers; and pathogenic or infectious waste.~~

~~(b) Solid waste does not include municipal sewage, industrial wastewater effluents, mining wastes regulated under the mining and reclamation laws administered by the department of environmental quality, or slash and forest debris regulated under laws administered by the department of natural resources and conservation."~~

Section 13. ~~Section 75-2-104, MCA, is amended to read:~~

~~"75-2-104. Limitations -- personal cause of action unabridged -- venue. (1) This chapter may not be construed to:~~

~~(a) grant to the board department any jurisdiction or authority with respect to air contamination existing solely within commercial and industrial plants, works, or shops;~~

~~(b) affect the relations between employers and employees with respect to or arising out of any condition of air contamination or air pollution;~~

~~(c) supersede or limit the applicability of any law or ordinance relating to sanitation, industrial health,~~

~~or safety; or~~

~~(d) abridge, limit, impair, create, enlarge, or otherwise affect substantively or procedurally the right of a person to damages or other relief on account of injury to persons or property and to maintain an action or other appropriate proceeding.~~

~~(2) A judicial challenge to a permit issued pursuant to this chapter by a party other than the permit applicant or permitholder must include the party to whom the permit was issued unless otherwise agreed to by the permit applicant or permitholder. All judicial challenges of permits for projects with a project cost, as determined by the court, of more than \$1 million must have precedence over any civil cause of a different nature pending in that court. If the court determines that the challenge was without merit or was for an improper purpose, such as to harass, to cause unnecessary delay, or to impose needless or increased cost in litigation, the court may award attorney fees and costs incurred in defending the action.~~

~~(3) An action to challenge a permit decision pursuant to this chapter must be brought in the county in which the permitted activity will occur. If an activity will occur in more than one county, the action may be brought in any of the counties in which the activity will occur.~~

~~(4) A judicial action or proceeding pursuant to this chapter for an equine slaughter or processing facility must comply with 81-9-240 and 81-9-241."~~

Section 7. Section 75-2-105, MCA, is amended to read:

"75-2-105. Confidentiality of records. (1) Records or other information concerning air pollutant sources that are furnished to or obtained by the ~~board or~~ department are a matter of public record and open to public use. However, any information unique to the owner or operator of an air pollutant source that would, if disclosed, reveal methods or processes entitled to protection as trade secrets must be maintained as confidential if so determined by a court of competent jurisdiction. The owner or operator shall file a declaratory judgment action to establish the existence of a trade secret if the owner or operator wishes the information to enjoy confidential status. The department must be served in the action and may intervene as a party in the action. A trade secret not intended to be public when submitted to the ~~board or~~ department must be submitted in writing and clearly marked as confidential. However, emission data and operating permits issued by the department pursuant to 75-2-217 through 75-2-219 may not be considered confidential for the purposes of this

1 section.

2 (2) This section does not prevent the use of records or information by the ~~board or~~ department in
3 compiling or publishing analyses or summaries relating to the general condition of the outdoor atmosphere if
4 the analyses or summaries do not identify an owner or operator or reveal information otherwise made
5 confidential by this section."

6

7 **Section 7.** Section 75-2-111, MCA, is amended to read:

8 **"75-2-111. Powers of board.** The board shall, subject to the provisions of 75-2-207:

9 ~~(1) adopt, amend, and repeal rules for the administration, implementation, and enforcement of this~~
10 ~~chapter, for issuing orders under and in accordance with 42 U.S.C. 7419, and for fulfilling the requirements of~~
11 ~~42 U.S.C. 7420 and regulations adopted pursuant to that section, except that, for purposes other than~~
12 ~~agricultural open burning, the board may not adopt permitting requirements or any other rule relating to:~~

13 ~~(a) any agricultural activity or equipment that is associated with the use of agricultural land or the~~
14 ~~planting, production, processing, harvesting, or storage of agricultural crops by an agricultural producer and that~~
15 ~~is not subject to the requirements of 42 U.S.C. 7475, 7503, or 7661a;~~

16 ~~(b) a commercial operation relating to the activities or equipment referred to in subsection (1)(a) that~~
17 ~~remains in a single location for less than 12 months and is not subject to the requirements of 42 U.S.C. 7475,~~
18 ~~7503, or 7661a; or~~

19 ~~(c) forestry equipment and its associated engine used for forestry practices that remain in a single~~
20 ~~location for less than 12 months and are not subject to the requirements of 42 U.S.C. 7475, 7503, or 7661a;~~

21 ~~(2)~~ (1) hold hearings relating to any aspect of or matter in the administration of this chapter at a place
22 designated by the board. The board may compel the attendance of witnesses and the production of evidence at
23 hearings. The board shall designate an attorney to assist in conducting hearings and shall appoint a reporter
24 who must be present at all hearings and take full stenographic notes of all proceedings, transcripts of which will
25 be available to the public at cost.

26 ~~(3)~~ (2) issue orders necessary to effectuate the purposes of this chapter;

27 ~~(4) by rule require access to records relating to emissions;~~

28 ~~(5) by rule adopt a schedule of fees required for permits, permit applications, and registrations~~

consistent with this chapter;

~~(6)(3)~~ have the power to issue orders under and in accordance with 42 U.S.C. 7419."

Section 9. Section 75-2-112, MCA, is amended to read:

"75-2-112. Powers and responsibilities of department. (1) The department is responsible for the administration of this chapter.

(2) Subject to the provisions of 75-2-207, the department shall:

(a) adopt, amend, and repeal rules for the administration, implementation, and enforcement of this chapter, ~~for issuing orders under and in accordance with 42 U.S.C. 7419,~~ and for fulfilling the requirements of 42 U.S.C. 7420 and regulations adopted pursuant to that section, except that, for purposes other than agricultural open burning, the department may not adopt permitting requirements or any other rule relating to:

(i) any agricultural activity or equipment that is associated with the use of agricultural land or the planting, production, processing, harvesting, or storage of agricultural crops by an agricultural producer and that is not subject to the requirements of 42 U.S.C. 7475, 7503, or 7661a;

(ii) a commercial operation relating to the activities or equipment referred to in subsection (2)(a)(i) that remains in a single location for less than 12 months and is not subject to the requirements of 42 U.S.C. 7475, 7503, or 7661a; or

(iii) forestry equipment and its associated engine used for forestry practices that remain in a single location for less than 12 months and are not subject to the requirements of 42 U.S.C. 7475, 7503, or 7661a;

~~(b) hold hearings relating to any aspect of or matter in the administration of this chapter at a place designated by the department. The department may compel the attendance of witnesses and the production of evidence at hearings. The department shall designate an attorney to assist in conducting hearings and shall appoint a reporter who must be present at all hearings and take full stenographic notes of all proceedings, transcripts of which will be available to the public at cost.~~

~~(e)(b)~~ issue orders necessary to effectuate the purposes of this chapter;

~~(d)(c)~~ by rule require access to records relating to emissions; and

~~(e)(d)~~ by rule adopt a schedule of fees required for permits, permit applications, and registrations consistent with this chapter;

~~(f) have the power to issue orders under and in accordance with 42 U.S.C. 7419.~~

~~(2)(3)~~ The department shall:

(a) by appropriate administrative and judicial proceedings, enforce orders issued by the department or
the ~~former~~ board ~~of environmental review~~;

(b) secure necessary scientific, technical, administrative, and operational services, including
laboratory facilities, by contract or otherwise;

(c) prepare and develop a comprehensive plan for the prevention, abatement, and control of air
pollution in this state;

(d) encourage voluntary cooperation by persons and affected groups to achieve the purposes of this
chapter;

(e) encourage local units of government to handle air pollution problems within their respective
jurisdictions on a cooperative basis and provide technical and consultative assistance for this. If local programs
are financed with public funds, the department may contract with the local government to share the cost of the
program. However, the state share may not exceed 30% of the total cost.

(f) encourage and conduct studies, investigations, and research relating to air contamination and air
pollution and their causes, effects, prevention, abatement, and control;

(g) determine, by means of field studies and sampling, the degree of air contamination and air
pollution in the state;

(h) make a continuing study of the effects of the emission of air contaminants from motor vehicles on
the quality of the outdoor atmosphere of this state and make recommendations to appropriate public and
private bodies with respect to this;

(i) collect and disseminate information and conduct educational and training programs relating to air
contamination and air pollution;

(j) advise, consult, contract, and cooperate with other agencies of the state, local governments,
industries, other states, interstate and interlocal agencies, the United States, and any interested persons or
groups;

(k) consult, on request, with any person proposing to construct, install, or otherwise acquire an air
contaminant source or device or system for the control thereof concerning the efficacy of this device or system

or the air pollution problems which may be related to the source, device, or system. Nothing in this consultation relieves a person from compliance with this chapter, rules in force under it, or any other provision of law.

(l) accept, receive, and administer grants or other funds or gifts from public or private agencies, including the United States, for the purpose of carrying out this chapter. Funds received under this section shall be deposited in the state treasury to the account of the department.

~~(3)(4)~~ The department may assess fees to the applicant for the analysis of the environmental impact of an application to redesignate the classification of any area, except those areas within the exterior boundaries of a reservation of a federally recognized Indian tribe, under the classifications established by 42 U.S.C. 7470 through 7479 (prevention of significant deterioration of air quality). The determination of whether or not a fee will be assessed is to be on a case-by-case basis."

Section 10. Section 75-2-201, MCA, is amended to read:

"75-2-201. Classifying and reporting air contaminant sources. (1) The ~~board~~department may classify air contaminant sources ~~which that~~ in its judgment may cause or contribute to air pollution according to levels and types of emissions and other characteristics ~~which that~~ relate to air pollution and may require reporting for any such class or classes. ~~Such~~The classifications ~~shall~~must be made with special reference to effects on health, economic and social factors, and physical effects on property and may be applied to the state as a whole or to any designated area.

(2) Any person operating or responsible for the operation of air contaminant sources of any class for which the rules of the ~~board~~department may require reporting shall make reports containing ~~such any~~ information as may be required concerning location, size and height of contaminant outlets, processes employed, fuels used, and the nature and time periods or duration of emissions and any other matter relevant to air pollution ~~which that~~ is available or reasonably capable of being assembled."

Section 11. Section 75-2-202, MCA, is amended to read:

"75-2-202. ~~Board~~Department to set ambient air quality standards. (1) The ~~board~~department shall establish ambient air quality standards for the state.

(2) Ambient air quality standards for fluorides ~~shall~~must be established through limitations upon the

1 concentration of fluorides in forage grasses, hay, and silage."

2

3 **Section 12.** Section 75-2-203, MCA, is amended to read:

4 **"75-2-203. ~~Board~~Department to set emission levels.** (1) The ~~board~~department may establish the
5 limitations of the levels, concentrations, or quantities of emissions of various pollutants from any source
6 necessary to prevent, abate, or control air pollution. Except as otherwise provided in or pursuant to this section,
7 ~~such those~~ levels, concentrations, or quantities ~~shall be~~are controlling, and no emission in excess ~~thereof shall~~
8 ~~be of those levels is~~ lawful.

9 (2) In any area where the concentration of air pollution sources or of population or where the nature of
10 the economy or of land and its uses ~~so may~~ require, the ~~board~~department may fix more stringent requirements
11 governing the emission of air pollutants than those in effect pursuant to subsection (1) ~~of this section~~.

12 (3) The ~~board~~department may by rule use any widely recognized measuring system for measuring
13 emission of air contaminants.

14 (4) Should federal minimum standards of air pollution be set by federal law, the ~~board~~department
15 may, if necessary in some localities of this state, set more stringent standards by rule."

16

17 **Section 13.** Section 75-2-204, MCA, is amended to read:

18 **"75-2-204. Rules relating to construction, installation, alteration, operation, or use.** The ~~board~~
19 department may by rule prohibit the construction, installation, alteration, operation, or use of a machine,
20 equipment, device, or facility that it finds may directly or indirectly cause or contribute to air pollution or that is
21 intended primarily to prevent or control the emission of air pollutants, unless the owner or operator ~~has obtained~~
22 obtains a permit under this part or has registered the source of air contaminants with the department if the
23 source is in a category for which only registration is required by the rules adopted to implement this part."

24

25 **Section 14.** Section 75-2-206, MCA, is amended to read:

26 **"75-2-206. Study of effects of sulfur dioxide on health and environment.** (1) To the extent that
27 funds are available, the ~~board~~department shall conduct an ongoing study in areas of Montana where there are
28 major industrial sources of sulfur dioxide. The study must concentrate on the effects on human health and the

environment of ambient sulfur dioxide concentrations separately and in conjunction with particulates.

(2) Notwithstanding other funding sources to pay for the study, the ~~board~~ department may accept funds and grants from private and public sources."

Section 15. Section 75-2-207, MCA, is amended to read:

"75-2-207. State regulations no more stringent than federal regulations or guidelines -- exceptions -- procedure. (1) After April 14, 1995, except as provided in subsections (2) and (3) or unless required by state law, the ~~board or~~ department may not adopt a rule to implement this chapter that is more stringent than the comparable federal regulations or guidelines that address the same circumstances. The ~~board or~~ department may incorporate by reference comparable federal regulations or guidelines.

(2) (a) The ~~board or~~ department may adopt a rule to implement this chapter that is more stringent than comparable federal regulations or guidelines only if:

(i) a public hearing is held;

(ii) public comment is allowed; and

(iii) the ~~board or the~~ department makes a written finding after the public hearing and comment period that is based on evidence in the record that the proposed standard or requirement:

(A) protects public health or the environment;

(B) can mitigate harm to the public health or the environment; and

(C) is achievable with current technology.

(b) The written finding required under subsection (2)(a)(iii) must reference information and peer-reviewed scientific studies contained in the record that form the basis for the ~~board's or the~~ department's conclusion. The written finding must also include information from the hearing record regarding costs to the regulated community that are directly attributable to the proposed standard or requirement.

(c) (i) A person or entity affected by a rule of the ~~board or~~ department adopted after January 1, 1990, and before April 14, 1995, that the person or entity believes is more stringent than comparable federal regulations or guidelines may petition the ~~board or~~ department to review the rule.

(ii) If the ~~board or~~ department determines that the rule is more stringent than comparable federal regulations or guidelines, the ~~board or~~ department shall either revise the rule to conform to the federal

1 regulations or guidelines or follow the process provided in subsections (2)(a) and (2)(b) within a reasonable
2 period of time, not to exceed 6 months after receiving the petition.

3 (iii) A petition under this section does not relieve the petitioner of the duty to comply with the
4 challenged rule. The ~~board or~~ department may charge a petition filing fee in an amount not to exceed \$250.

5 (iv) A person may also petition the ~~board or~~ department for a rule review under subsection (2)(a) if the
6 ~~board or~~ department adopts a rule after January 1, 1990, in an area in which no federal regulations or
7 guidelines existed and the federal government subsequently establishes comparable regulations or guidelines
8 that are less stringent than the previously adopted ~~board or~~ department rule.

9 (3) This section does not apply to a rule adopted under the emergency rulemaking provisions of 2-4-
10 303(1)."

11
12 **Section 16.** Section 75-2-211, MCA, is amended to read:

13 **"75-2-211. Permits for construction, installation, alteration, or use.** (1) The ~~board~~ department
14 shall by rule provide for the issuance, modification, suspension, revocation, and renewal of a permit issued
15 under this part.

16 (2) (a) Except as provided in 75-1-208(4)(b), 75-2-234, and subsections (2)(b) and (2)(c) of this
17 section, not later than 180 days before construction, installation, or alteration begins or as a condition of use of
18 any machine, equipment, device, or facility that the ~~board~~ department finds may directly or indirectly cause or
19 contribute to air pollution or that is intended primarily to prevent or control the emission of air pollutants, the
20 owner or operator shall file with the department the appropriate permit application on forms available from the
21 department.

22 (b) Except as provided in subsection (2)(e), the owner or operator of an oil or gas well facility shall file
23 the permit application with the department no later than January 3, 2006, or 60 days after the initial well
24 completion date, whichever is later. For purposes of this section, the initial well completion date for an oil or gas
25 well facility is:

26 (i) for an oil or gas well facility producing oil, the date when the first oil is produced through wellhead
27 equipment into lease tanks from the ultimate producing interval after casing has been run; and

28 (ii) for an oil or gas well facility producing gas, the date when the oil or gas well facility is capable of

1 producing gas through wellhead equipment from the ultimate producing interval after casing has been run.

2 (c) An owner or operator who complies with subsection (2)(b) may construct, install, or use equipment
3 necessary to complete or operate an oil or gas well facility without a permit until the department's decision on
4 the application is final. If the owner or operator does not comply with subsection (2)(b), the owner or operator
5 may not operate the oil or gas well facility and is liable for a violation of this section for every day of
6 construction, installation, or operation of the facility.

7 (d) The ~~board~~department shall adopt rules establishing air emission control requirements applicable
8 to an oil or gas well facility during the time from the initial well completion date until the department's decision
9 on the application is final.

10 (e) The provisions of subsections (2)(b) and (2)(c) do not apply to an oil or gas well facility subject to
11 the federal air permitting provisions of 42 U.S.C. 7475 or 7503.

12 (3) The permit program administered by the department pursuant to this section must include the
13 following:

14 (a) requirements and procedures for permit applications, including standard application forms;

15 (b) requirements and procedures for submittal of information necessary to determine the location,
16 quantity, and type of emissions;

17 (c) procedures for public notice and opportunity for comment or public hearing, as appropriate;

18 (d) procedures for providing notice and an opportunity for comment to contiguous states and federal
19 agencies, as appropriate;

20 (e) requirements for inspection, monitoring, recordkeeping, and reporting;

21 (f) procedures for the transfer of permits;

22 (g) requirements and procedures for suspension, modification, and revocation of permits by the
23 department;

24 (h) requirements and procedures for appropriate emission limitations and other requirements,
25 including enforceable measures necessary to ensure compliance with those limitations and requirements;

26 (i) requirements and procedures for permit modification and amendment; and

27 (j) requirements and procedures for issuing a single permit authorizing emissions from similar
28 operations at multiple temporary locations, which permit may include conditions necessary to ensure

1 compliance with the requirements of this chapter at all authorized locations and a requirement that the owner or
2 operator notify the department in advance of each change in location.

3 (4) This section does not restrict the ~~board's~~ department's authority to adopt regulations providing for
4 a single air quality permit system.

5 (5) Department approval of an application to transfer a portable emission source from one location to
6 another is exempt from the provisions of 75-1-201(1).

7 (6) The department may, for good cause shown, waive or shorten the time required for filing the
8 appropriate applications.

9 (7) The department shall require that applications for permits be accompanied by any plans,
10 specifications, and other information that it considers necessary.

11 (8) An application is not considered filed until the applicant has submitted all fees required under 75-
12 2-220 and all information and completed application forms required pursuant to subsections (2), (3), and (7) of
13 this section. If the department fails to notify the applicant in writing within 30 days after the purported filing of an
14 application that the application is incomplete and fails to list the reasons why the application is considered
15 incomplete, the application is considered filed as of the date of the purported filing.

16 (9) (a) Except as provided in 75-1-205(4) and 75-1-208(4)(b), if an application for a permit requires
17 the preparation of an environmental impact statement under the Montana Environmental Policy Act, Title 75,
18 chapter 1, parts 1 through 3, the department shall notify the applicant in writing of the approval or denial of the
19 application:

20 (i) within 180 days after the department's receipt of a filed application, as provided in subsection (8), if
21 the department prepares the environmental impact statement;

22 (ii) within 30 days after issuance of the final environmental impact statement by the lead agency if a
23 state agency other than the department has been designated by the governor as lead agency for preparation of
24 the environmental impact statement; or

25 (iii) if the application is for a machine, equipment, a device, or a facility at an operation that requires a
26 permit under Title 82, chapter 4, part 1, 2, or 3, within 30 days of issuance of the final environmental impact
27 statement in accordance with time requirements of Title 82, chapter 4, part 1, 2, or 3.

28 (b) If an application does not require the preparation of an environmental impact statement, is not

1 subject to the provisions of 75-2-215, and is not subject to the federal air quality permitting provisions of 42
2 U.S.C. 7475, 7503, or 7661a, the department shall notify the applicant in writing within 60 days after its receipt
3 of a filed application, as provided in subsection (8), of its approval or denial of the application, except as
4 provided in subsection (14).

5 (c) If an application does not require the preparation of an environmental impact statement and is
6 subject to the federal air permitting provisions of 42 U.S.C. 7475, 7503, or 7661a, the department shall notify
7 the applicant, in writing, within 75 days after its receipt of a filed application, as provided in subsection (8), of its
8 approval or denial of the application.

9 (d) Except as provided in subsection (9)(e), if an application does not require the preparation of an
10 environmental impact statement and is subject to the provisions of 75-2-215, the department shall notify the
11 applicant of its approval or denial of the application, in writing, within 75 days after its receipt of a filed
12 application, as provided in subsection (8).

13 (e) If an application for a permit is for the construction, installation, alteration, or use of a source that
14 is also required to obtain a license pursuant to 75-10-221 or a permit pursuant to 75-10-406, the department
15 shall prepare a single environmental review document pursuant to Title 75, chapter 1, for the permit required
16 under this section and the license or permit required under 75-10-221 or 75-10-406 and act on the applications
17 within the time period provided for in 75-2-215(3)(e).

18 (f) The time for notification may be extended for 30 days by written agreement of the department and
19 the applicant. Additional 30-day extensions may be granted by the department upon the request of the
20 applicant. Notification of approval or denial may be served personally or by certified mail on the applicant or the
21 applicant's agent.

22 (g) Failure by the department to act in a timely manner does not constitute approval or denial of the
23 application. This does not limit or abridge the right of any person to seek available judicial remedies to require
24 the department to act in a timely manner.

25 (10) Except as provided in 75-2-213, when the department approves or denies the application for a
26 permit under this section, a person who is directly and adversely affected by the department's decision may
27 request a hearing before the ~~board~~ department board. The request for hearing must be filed within 15 days after
28 the department renders its decision. An affidavit setting forth the grounds for the request must be filed within 30

1 days after the department renders its decision. The contested case provisions of the Montana Administrative
2 Procedure Act, Title 2, chapter 4, part 6, apply to a hearing before the ~~board~~ department board under this
3 subsection.

4 (11) Except as provided in 75-2-213:

5 (a) the department's decision on the application is not final until 15 days have elapsed from the date
6 of the decision;

7 (b) the filing of a request for hearing does not stay the department's decision. However, the ~~board~~
8 department board may order a stay upon receipt of a petition and a finding, after notice and opportunity for
9 hearing, that:

10 (i) the person requesting the stay is entitled to the relief demanded in the request for a hearing; or

11 (ii) continuation of the permit during the appeal would produce great or irreparable injury to the person
12 requesting the stay.

13 (c) upon granting a stay, the ~~board~~ department board may require a written undertaking to be given
14 by the party requesting the stay for the payment of costs and damages incurred by the permit applicant and its
15 employees if the ~~board~~ department board determines that the permit was properly issued. When requiring an
16 undertaking, the ~~board~~ department board shall use the same procedures and limitations as are provided in 27-
17 19-306(2) through (4) for undertakings on injunctions.

18 (12) The ~~board~~ department shall provide, by rule, a period of 30 days in which the public may submit
19 comments on draft air quality permits for applications that:

20 (a) are subject to the federal air quality permitting provisions of 42 U.S.C. 7475, 7503, or 7661a;

21 (b) are subject to the requirements of 75-2-215; or

22 (c) require the preparation of an environmental impact statement.

23 (13) The ~~board~~ department shall provide, by rule, a period of 15 days in which the public may submit
24 comments on draft air quality permits not subject to subsection (12).

25 (14) The ~~board~~ department shall provide, by rule, the basis upon which the department may extend by
26 15 days:

27 (a) the period as provided in subsection (13) in which the public may submit comments on draft air
28 quality permits not subject to subsection (12); and

(b) the period for notifying an applicant of its final decision on approval or denial of an application, as provided in subsection (9)(b).

(15) (a) The ~~board~~ department may adopt rules for issuance, modification, suspension, revocation, renewal, or creation of:

(i) general permits covering multiple similar sources; or

(ii) other permits covering multiple similar sources.

(b) Rules adopted pursuant to subsection (15)(a) may provide for construction and operation under the permit upon authorization by the department or upon notice to the department."

Section 17. Section 75-2-212, MCA, is amended to read:

"75-2-212. Variances -- renewals -- filing fees. (1) A person who owns or is in control of a plant, building, structure, process, or equipment may apply to the ~~board~~ department for an exemption or partial exemption from rules governing the quality, nature, duration, or extent of emissions of air pollutants. The application must be accompanied by information and data that the ~~board~~ department may require. The ~~board~~ department may grant an exemption or partial exemption if it finds that:

(a) the emissions occurring or proposed to occur do not constitute a danger to public health or safety; and

(b) compliance with the rules from which an exemption is sought would produce hardship without equal or greater benefits to the public.

(2) An exemption or partial exemption may not be granted pursuant to this section except after public hearing on due notice and until the ~~board~~ department has considered the relative interests of the applicant, other owners or property likely to be affected by the emissions, and the general public.

(3) The exemption or partial exemption may be renewed if a complaint is not made to the ~~board~~ department because of it or if, after the complaint has been made and duly considered at a public hearing held by the ~~board~~ department on due notice, the ~~board~~ department finds that renewal is justified. A renewal may not be granted except on application. An application must be made at least 60 days before the expiration of the exemption or partial exemption. Immediately before application for renewal, the applicant shall give public notice of the application in accordance with rules of the ~~board~~ department. A renewal pursuant to this

1 subsection must be on the same grounds and subject to the same limitations and requirements as provided in
2 subsection (1).

3 (4) An exemption, partial exemption, or renewal is not a right of the applicant or holder but may be
4 granted at the discretion of the ~~board~~ department. However, a person adversely affected by an exemption,
5 partial exemption, or renewal granted by the ~~board~~ department may obtain judicial review as provided by 75-2-
6 411.

7 (5) This section and an exemption, partial exemption, or renewal granted pursuant to this section may
8 not be construed to prevent or limit the application of the emergency provisions and procedures of 75-2-402 to
9 a person or the person's property.

10 (6) A person who owns or is in control of a plant, building, structure, process, or equipment, which are
11 called facilities, who applies to the ~~board~~ department for an exemption or partial exemption or a renewal of an
12 exemption or partial exemption from a rule governing the quality, nature, duration, or extent of emissions of air
13 pollutants shall submit with the application for variance a sum of not less than \$500 or 2% of the cost of the
14 equipment to bring the facility into compliance with the rule for which a variance is sought, whichever is greater,
15 but not to exceed \$80,000. The department shall prepare a statement of actual costs, and funds in excess of
16 this must be returned to the applicant. The person requesting the variance shall describe the facility in sufficient
17 detail, with accompanying estimates of cost and verifying materials, to permit the department to determine with
18 reasonable accuracy the sum of the fee. For a renewal of an exemption or partial exemption, if a public hearing,
19 environmental impact statement, or appreciable investigation by the department is not necessary, the minimum
20 filing fee applies or the fee may be waived by the department. The filing fee must be deposited in the state
21 special revenue fund provided for in 17-2-102. It is the intent of the legislature that the revenue derived from the
22 filing fees must be used by the department to:

- 23 (a) compile the information required for rendering a decision on the request;
24 (b) compile the information necessary for any environmental impact statements;
25 (c) offset the costs of a public hearing, printing, or mailing; and
26 (d) carry out its other responsibilities under this chapter."

27

28 **~~Section 24. Section 75-2-213, MCA, is amended to read:~~**

~~"75-2-213. — Energy development project — hearing and procedures. (1) (a) When the department approves or denies the application for a permit under 75-2-211 for an energy development project, the applicant or a person who has provided the department with formal comments and who is directly and adversely affected by the department's decision may request a hearing before the board department. If the department provided an opportunity for public comment on the application, the request for a hearing must be limited to those issues raised in comments made to the department during the comment period unless the issues are related to a material change in federal or state law made during the comment period, to a judicial decision issued after the comment period, or to a material change to the draft permit, which was submitted for public comment, made by the department in the final permit decision and upon which the public did not have a meaningful opportunity to comment. The request for hearing must be filed within 30 days after the department renders its decision. An affidavit setting forth the grounds for the request must be filed with the request for a hearing.~~

~~(b) (i) If a hearing is requested by a person other than the applicant for or permittee of an energy development project, the applicant or permittee may, by filing a written election with the board department within 15 days of receipt of the request for hearing, elect to have the matter proceed to hearing before the board department or to have the matter submitted directly to the district court for judicial review of the agency decision. The party who requests the hearing may elect to have the matter submitted either to the board department for a hearing or to the district court for judicial review by submitting a written election to the board department with the request for hearing. If there are conflicting elections between the parties, the matter must proceed to district court.~~

~~(ii) If the applicant or permittee is not the person who requested the hearing and has elected to have the matter submitted to the district court, the person who submitted the request for a hearing shall file a petition for review of the permit decision within 15 days of receipt of notice from the permittee. If the person who requested the hearing has elected to have the matter proceed to district court, that person shall file a petition in district court within 15 days of filing the request.~~

~~(iii) The petition must be limited to matters raised in the request for hearing and must be filed in the county in which the facility is located.~~

~~(iv) If a party does not elect to submit the matter directly to district court, the matter must proceed through the contested case process before the board department pursuant to the Montana Administrative~~

1 ~~Procedure Act.~~

2 ~~(v) The board department or the district court shall apply the laws and rules in place when the~~
3 ~~department issued its decision, and the board department or the district court may not consider any issue that~~
4 ~~was not presented to the department for the department's consideration during the formal comment period~~
5 ~~unless the issue is related to a material change in federal or state law made during the comment period, to a~~
6 ~~judicial decision issued after the comment period, or to a material change to the draft permit, which was~~
7 ~~submitted for public comment, made by the department in the final permit decision and upon which the public~~
8 ~~did not have a meaningful opportunity to comment.~~

9 ~~(c) (i) Except as provided in subsection (1)(c)(ii), if the person requesting the hearing is not the~~
10 ~~applicant or permittee of an energy development project, the board department or the district court shall require~~
11 ~~a written undertaking to be given by the party requesting the hearing for the payment of costs and damages~~
12 ~~incurred by the permit applicant and its employees if the request for a hearing or judicial review was for an~~
13 ~~improper purpose designed to harass, cause unnecessary delay, or improperly interfere with the issuance of~~
14 ~~the permit without a reasonable basis in law or fact.~~

15 ~~(ii) The board department or the district court may not require a written undertaking if the party~~
16 ~~requesting the hearing is an indigent person.~~

17 ~~(d) If grounds for requesting the hearing are based on alleged error in applying best available control~~
18 ~~technology requirements, the board department or the district court shall give deference to the best available~~
19 ~~control technology determination made by the department. The board department or the district court may not~~
20 ~~reject the best available control technology determination unless the determination was incorrect as a matter of~~
21 ~~law or the factual basis for the determination was clearly erroneous.~~

22 ~~(2) The board department shall issue a final decision within 4 months from the close of the hearing on~~
23 ~~the merits or, if no hearing is held, within 3 months from the date that briefing by the parties is complete unless~~
24 ~~the applicant or permittee and the party other than the applicant or permittee agree in writing to an extension of~~
25 ~~time. The board department shall require the parties to prepare the case for hearing without unreasonable~~
26 ~~delay.~~

27 ~~(3) (a) Any requirement in a permit to commence construction, installation, or alteration within a~~
28 ~~certain time period is tolled during a contested case or judicial review proceeding, but not by more than 12~~

1 ~~months, unless the applicant or permittee in its discretion waives the tolling in writing.~~

2 ~~(b) If there are multiple appeals of one permit, tolling under this subsection (3) may not exceed a total~~
3 ~~of 12 months for all appeals.~~

4 ~~(c) The applicant may not engage in construction during the period that the time period is tolled under~~
5 ~~subsection (3)(a).~~

6 ~~(4) The department shall, for good cause shown, waive for up to 1 year any requirement that~~
7 ~~construction of an energy development project must proceed with due diligence. During the period that a waiver~~
8 ~~is in effect, an air quality permit does not expire because construction of an energy development project failed~~
9 ~~to proceed with due diligence."~~

10

11 **Section 18.** Section 75-2-215, MCA, is amended to read:

12 **"75-2-215. Solid or hazardous waste incineration -- additional permit requirements.** (1) Until the
13 department ~~has issued~~ issues an air quality permit pursuant to 75-2-211 that includes the conditions required
14 by this section, a person may not construct, install, alter, or use a solid or hazardous waste incinerator or a
15 boiler or industrial furnace subject to the provisions of 75-10-406, except as provided in subsection (2).

16 (2) An existing or permitted solid or hazardous waste incinerator or a boiler or industrial furnace
17 subject to the provisions of 75-10-406 is subject to the provisions of subsection (1) only if it incinerates or uses
18 as fuel or would incinerate or use as fuel solid or hazardous waste in an amount, form, kind, or content that
19 changes the nature, character, or composition of its emissions from its design or permitted operation.

20 (3) The department may not issue a permit to a facility described in subsection (1) until:

21 (a) the owner or operator ~~has provided~~ provides to the department's satisfaction:

22 (i) a characterization of emissions and ambient concentrations of air pollutants, including hazardous
23 air pollutants, from any existing emission source at the facility; and

24 (ii) an estimate of emissions and ambient concentrations of air pollutants, including hazardous air
25 pollutants, from the incineration of solid or hazardous waste or the use of hazardous waste as fuel for a boiler
26 or industrial furnace, as proposed in the permit application or modification;

27 (b) if a license is required pursuant to 75-10-221 or a permit is required pursuant to 75-10-406, the
28 applicant has published, in the county where the project is proposed, at least three notices, in accordance with

1 the procedures identified in 7-1-4127, describing the proposed project;

2 (c) if a license is required pursuant to 75-10-221 or a permit is required pursuant to 75-10-406, the
3 department has conducted a public hearing on an environmental review prepared pursuant to Title 75, chapter
4 1, and, as appropriate, provided additional opportunities for the public to review and comment on the permit
5 application or modification;

6 (d) the department ~~has reached~~ reaches a determination that the projected emissions and ambient
7 concentrations will constitute a negligible risk to the public health, safety, and welfare and to the environment;
8 and

9 (e) the department ~~has issued~~ issues a license pursuant to 75-10-221 or a permit pursuant to 75-10-
10 406, if a license or permit is required. The decision to issue, deny, or alter a permit pursuant to 75-2-211 and
11 this section must be made within 30 days from when the department issues a license pursuant to 75-10-221 or
12 a permit pursuant to 75-10-406 or within 90 days after the receipt of a complete application for a permit or a
13 permit alteration under 75-2-211 and this section, whichever is later.

14 (4) The department shall require the application of air pollution control equipment, engineering, or
15 other operating procedures as necessary to provide reductions of air pollutants, including hazardous air
16 pollutants, equivalent to or more stringent than those achieved through the best available control technology.

17 (5) The ~~board~~ department may by rule provide for general air quality permits under the provisions of
18 75-2-211 and this section. The rules must cover numerous similar classes or categories of incinerators and
19 boilers or industrial furnaces.

20 (6) This section does not relieve an owner or operator of a solid or hazardous waste incinerator or a
21 boiler or industrial furnace that is not included under subsection (1) from the obligation to obtain any permit
22 otherwise required under this chapter or rules implementing this chapter."
23

24 **Section 19.** Section 75-2-217, MCA, is amended to read:

25 **"75-2-217. Operating permit program -- exemptions -- general requirements -- duration.** (1) The
26 ~~board~~ department shall provide by rule for the issuance, expiration, modification, amendment, suspension,
27 revocation, and renewal of operating permits as part of an operating permit program to be administered by the
28 department under this chapter. The ~~board~~ department shall promulgate rules that are consistent with the

1 operating permit framework and guidelines outlined in Subchapter V of the federal Clean Air Act and
2 implementing regulations.

3 (2) This section applies to all sources of air pollutants that are subject to the provisions of Subchapter
4 V of the federal Clean Air Act, 42 U.S.C. 7661, et seq.

5 (3) A person may not violate any requirement of an operating permit issued under 75-2-218 and this
6 section or operate any source required to have a permit under this section without having complied with the
7 requirements of the operating permit program administered by the department pursuant to 75-2-218, 75-2-219,
8 and this section.

9 (4) The ~~board~~department may by rule provide for the exemption of one or more source categories, in
10 whole or in part, from all or part of the requirements of this section if the ~~board~~department determines that
11 compliance with the requirements of this section is impracticable, infeasible, or unnecessarily burdensome for
12 the sources. The ~~board~~department may premise this determination upon a similar determination by the
13 appropriate federal agency acting pursuant to the federal Clean Air Act, 42 U.S.C. 7401, et seq.

14 (5) The ~~board~~department may by rule provide for general operating permits covering numerous
15 similar sources.

16 (6) An operating permit issued by the department under 75-2-218 and this section is effective for a
17 period not to exceed 5 years and may be renewed.

18 (7) The operating permit program administered by the department pursuant to this section must
19 include the following:

20 (a) adequate procedures that are streamlined and reasonable for:

21 (i) expeditiously determining when applications are complete;

22 (ii) processing applications; and

23 (iii) expeditiously reviewing permit actions, including application renewals or revisions;

24 (b) requirements and procedures for submittal of information necessary to determine the location,
25 quantity, and type of emissions;

26 (c) procedures for public notice and opportunity for comment or public hearing, as appropriate;

27 (d) procedures for providing notice and an opportunity for comment to contiguous states and federal
28 agencies, as appropriate;

- 1 (e) requirements for inspection, monitoring, recordkeeping, compliance certification, and reporting;
- 2 (f) deadlines for submitting permit applications and compliance plans that are not later than 12
- 3 months after the source becomes subject to the operating permit requirement;
- 4 (g) deadlines for submitting permit renewal applications that are not later than 6 months before
- 5 expiration of the existing operating permit;
- 6 (h) requirements for compliance plans that must be submitted with permit and renewal applications,
- 7 including schedules of compliance and progress reports;
- 8 (i) requirements and procedures for periodic certification of source compliance with permit
- 9 requirements, including the prompt reporting of any deviations from permit requirements;
- 10 (j) requirements for submission of any plans, specifications, or other information that the department
- 11 considers necessary under this section;
- 12 (k) conditions and procedures for the transfer of operating permits;
- 13 (l) requirements and procedures for suspension, modification, amendment, and revocation of permits
- 14 by the department for cause, including the modification or amendment of permits before renewal or termination
- 15 to incorporate applicable limitations or requirements effective after permit issuance;
- 16 (m) requirements and procedures for incorporating into permits and permit renewals all applicable
- 17 emission limitations and other requirements, including enforceable measures necessary to ensure compliance
- 18 with those limitations and requirements;
- 19 (n) requirements and procedures for permit modification and amendment;
- 20 (o) procedures for tracking activities conducted under general permits;
- 21 (p) requirements and procedures for issuing a single operating permit authorizing emissions from
- 22 similar operations at multiple temporary locations, which permit may include conditions necessary to ensure
- 23 compliance with the requirements of this chapter at all authorized locations and a requirement that the owner or
- 24 operator notify the department in advance of each change in location;
- 25 (q) requirements and procedures for allowing changes within a permitted facility without requiring a
- 26 permit amendment if the changes are not prohibited under this chapter and do not exceed the emissions
- 27 allowable under the permit; and
- 28 (r) other requirements necessary for the department to obtain the authorization to administer an

1 operating permit program under the provisions of Subchapter V of the federal Clean Air Act."

2

3 **Section 20.** Section 75-2-218, MCA, is amended to read:

4 **"75-2-218. Permits for operation -- application completeness -- action by department --**

5 **application shield -- review by ~~board~~ department board.** (1) An application for an operating permit or
6 renewal is not considered filed until the department has determined that it is complete. An application is
7 complete if all fees required under 75-2-220 and all information and completed application forms required under
8 75-2-217 have been submitted. A complete application must contain all ~~of~~ the information required for the
9 department to begin processing the application. If the department fails to notify the applicant in writing within 60
10 days after submittal of an application that the application is incomplete and fails to list the reasons why the
11 application is considered incomplete, the application is considered filed on the date of the department's receipt
12 of the application. The department may request additional information after a completeness determination has
13 been made. The ~~board~~ department shall adopt rules that contain criteria for use in determining both when an
14 application is complete and when additional information is required after a completeness determination has
15 been made.

16 (2) Except as provided in 75-1-208(4)(b) and subsection (3) of this section, the department shall,
17 consistent with the procedures established under 75-2-217, approve or disapprove a complete application for
18 an operating permit or renewal and shall issue or deny the permit or renewal within 18 months after the date of
19 filing. Failure of the department to act in a timely manner does not constitute approval or denial of the
20 application. This does not limit or abridge the right of any person to seek available judicial remedies to require
21 the department to act in a timely manner.

22 (3) The ~~board~~ department may by rule provide for a transition schedule for both the submittal to the
23 department of initial applications for operating permits by existing sources and action by the department on
24 these initial permit applications. The ~~board~~ department may require that one-third of all operating permit
25 applications required for existing sources be submitted within the first calendar year after the adoption of rules
26 implementing an operating permit program under 75-2-217.

27 (4) If an applicant submits a timely and complete application for an operating permit, the applicant's
28 failure to hold a valid operating permit is not a violation of 75-2-217. If an applicant submits a timely and

complete application for an operating permit renewal, the expiration of the applicant's existing operating permit is not a violation of 75-2-217. The applicant shall continue to be subject to the terms and conditions of the expired operating permit until the operating permit is renewed and is subject to the application of 75-2-217. The applicant is not entitled to the protection of this subsection if the delay in final action by the department on the application results from the applicant's failure to submit in a timely manner information requested by the department to process the application.

(5) Except as provided in subsection (8), if the department approves or denies an application for an operating permit or the renewal, modification, or amendment of a permit under 75-2-217 and this section, any person that participated in the public comment process required under 75-2-217(7) may request a hearing before the ~~board~~ department board. The request for a hearing must be filed within 30 days after the department renders its decision and must include an affidavit setting forth the grounds for the request. The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing ~~before the board~~ department under this subsection.

(6) (a) Except as provided in subsection (8), the department's decision on any application is not final until 30 days have elapsed from the date of the decision.

(b) Except as provided in subsection (8), the filing of a request for hearing does not stay the department's decision. However, the ~~board~~ department board may order a stay upon receipt of a petition and a finding, after notice and opportunity for an informal hearing, that:

- (i) the person requesting the hearing is entitled to the relief demanded in the request for a hearing; or
- (ii) continuation of the permit during the appeal would produce great or irreparable injury to the person requesting the hearing.

(c) Upon granting a stay, the ~~board~~ department board may require a written undertaking to be given by the party requesting the stay for the payment of costs and damages incurred by the permit applicant and its employees if the ~~board~~ department board determines that the permit was properly issued. When requiring an undertaking, the ~~board~~ department board shall use the same procedures and limitations as are provided in 27-19-306(2) through (4) for undertakings on injunctions.

(7) The requirements of subsections (5) and (6) also apply to any action initiated by the department to suspend, revoke, modify, or amend an operating permit issued under this section.

(8) The denial by the department of an application under 75-2-217 and this section is not subject to review by the ~~board~~ department board or judicial review if the basis for denial is the written objection of the appropriate federal agency acting pursuant to the federal Clean Air Act, 42 U.S.C. 7401, et seq.

(9) Compliance with an operating permit granted or renewed under 75-2-217 and this section is considered to be compliance with the requirements of this chapter only if the permit expressly includes those requirements or an express determination that those requirements are not applicable. This subsection does not apply to general permits provided for under 75-2-217."

Section 21. Section 75-2-219, MCA, is amended to read:

"75-2-219. Permits for operation -- limitations. Sections 75-2-217 and 75-2-218 may not be construed to:

(1) affect the department's issuance of a permit for the construction, installation, alteration, or use of a source of air pollutants pursuant to 75-2-211 or 75-2-215;

(2) restrict the ~~board's~~ department's authority to adopt regulations providing for a single air quality permit system; or

(3) affect permits, allowances, phase II compliance schedules, or other acid rain provisions under Subchapter IV of the federal Clean Air Act, 42 U.S.C. 7651, et seq."

Section 22. Section 75-2-220, MCA, is amended to read:

"75-2-220. Fees -- special assessments -- late payment assessments -- credit. (1) A person required to obtain a permit or to register a facility pursuant to this chapter shall submit to the department fees set ~~by the board~~ pursuant to ~~75-2-111~~ 75-2-112 that are sufficient to cover the reasonable costs, direct and indirect, of developing and administering the permitting or registration requirements in this chapter, including:

(a) reviewing and acting upon a permit application or a registration or modifying, amending, or updating a permit or registration;

(b) implementing and enforcing the terms and conditions of a permit issued pursuant to this chapter or an administrative rule or other regulatory requirement adopted pursuant to this chapter. This does not include any court costs or other costs associated with an enforcement action. If the permit is not issued, the department

1 shall return this portion of the fee to the applicant.

2 (c) emissions and ambient monitoring;

3 (d) preparing generally applicable rules or guidance;

4 (e) modeling, analysis, and demonstrations;

5 (f) preparing inventories and tracking emissions;

6 (g) providing support to sources under the small business stationary source technical and
7 environmental compliance assistance program; and

8 (h) all other costs required to be recovered pursuant to Subchapter V of the federal Clean Air Act, 42
9 U.S.C. 7661, et seq.

10 (2) For a permit or registration fee based on emissions, the fee must be based on emissions of air
11 pollutants regulated under this chapter, including but not limited to volatile organic compounds, each air
12 pollutant regulated under section 7411 or 7412 of the federal Clean Air Act, 42 U.S.C. 7401, et seq., and each
13 air pollutant subject to a national primary ambient air quality standard.

14 (3) The ~~board~~department shall by rule provide for the annual review of all fees assessed for persons
15 holding an operating permit issued under 75-2-217 and 75-2-218 to ensure the collection of revenue sufficient
16 to cover the costs of administering the operating permit requirements of this chapter, as required by Subchapter
17 V of the federal Clean Air Act.

18 (4) In addition to the fees required under subsection (1), the ~~board~~department may order the
19 assessment of additional fees required to fund specific activities of the department that are directed at a
20 particular geographic area if the legislature authorizes the activities and appropriates funds for the activities,
21 including emissions or ambient monitoring, modeling analysis or demonstrations, and emissions inventories or
22 tracking. Additional assessments may be levied only on those sources that are within or are believed by the
23 department to be impacting the geographic area. Before the ~~board~~department may require the fees, it shall first
24 determine, after opportunity for hearing, that the activities to be funded are necessary for the administration or
25 implementation of this chapter, that the amount of the requested fees is appropriate, that the assessments
26 apportion the required funding in an equitable manner, and that the department has obtained the necessary
27 appropriation. The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4,
28 part 6, apply to a hearing before the ~~board~~department under this subsection.

(5) (a) If the permitholder or registrant fails to pay in a timely manner a fee required under subsection (1), in addition to the fee, the department may:

(i) impose a penalty not to exceed 50% of the fee, plus interest on the required fee computed as provided in 15-1-216; or

(ii) revoke the permit or registration consistent with those procedures established under this chapter for permit revocation.

(b) Within 1 year of revocation, the department may reissue the revoked permit or registration after the permitholder or registrant has paid all outstanding fees required under subsections (1) and (4), including all penalties and interest provided for under this subsection (5). In reissuing the revoked permit, the department may modify the terms and conditions of the permit as necessary to account for changes in air quality occurring since revocation.

(c) The ~~board~~department shall by rule provide for the implementation of this subsection (5), including criteria for imposition of the sanctions described in this subsection (5).

(6) The ~~board~~department may by rule allow the reduction of a fee required under this section for an operating permit or permit renewal to account for the financial resources of a category of small business stationary sources.

(7) As a condition of the continuing validity of a permit issued by the department under this chapter prior to October 1, 1993, the ~~board~~department may by rule require the permitholder to pay the fees under subsections (1) and (4).

(8) For an existing source of air pollutants that is subject to Subchapter V of the federal Clean Air Act and that is not required to hold an air quality permit from the department as of October 1, 1993, the ~~board~~department may, as a condition of continued operation, require by rule that the owner or operator of the source pay the fees under subsections (1) and (4).

(9) (a) The department shall give written notice of the fee to be assessed and the basis for the department's fee assessment under this section to the owner or operator of the air pollutant source. The owner or operator may appeal the department's fee assessment ~~to the board~~ to the board within 20 days after receipt of the written notice.

(b) An appeal must be based upon the allegation that the fee assessment is erroneous or excessive.

1 An appeal may not be based on the amount of the fee contained in the schedule adopted by the ~~board~~
2 department.

3 (c) If any part of the fee assessment is not appealed, it must be paid to the department upon receipt
4 of the notice required in subsection (9)(a).

5 (d) The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4,
6 part 6, apply to a hearing before the ~~board~~ department board under this subsection (9).

7 (10) The total of the fees charged to an applicant under subsections (1) and (4) of this section must be
8 reduced by the amount of any credit accruing to the applicant under 75-2-225. The department may not
9 increase fee assessments beyond legislative appropriation levels to adjust for any credit claimed under 75-2-
10 225. The credit applied under 75-2-225 may not limit the department's ability to collect fees sufficient to cover
11 the reasonable costs, both direct and indirect, of developing and administering the permitting and registration
12 requirements of this chapter."
13

14 **Section 23.** Section 75-2-221, MCA, is amended to read:

15 **"75-2-221. Deposit of air quality permitting and registration fees.** (1) All money collected by the
16 department pursuant to ~~75-2-111~~ 75-2-112 and 75-2-220 must be deposited in an account in the state special
17 revenue fund to be appropriated by the legislature to the department for the development and administration of
18 the permitting and registration requirements of this chapter.

19 (2) Upon request, the expenditure by the department of funds in this account may be audited by a
20 qualified auditor at the end of each fiscal year. The cost of the audit must be paid by the person requesting the
21 audit."
22

23 **Section 24.** Section 75-2-231, MCA, is amended to read:

24 **"75-2-231. Medical waste and hazardous waste incineration -- additional permit requirements.**

25 (1) Because of the potential emission of chlorinated dioxins, furans, heavy metals, and carcinogens as a result
26 of the incineration of medical waste and hazardous waste and the potential health risk these chemicals pose,
27 the ~~board~~ department shall adopt rules establishing additional permit requirements for commercial medical
28 waste and commercial hazardous waste incinerators. For the purposes of this section, the term "commercial

medical waste incinerator" does not include hospital or medical facility incinerators that primarily incinerate medical waste generated onsite. The ~~board~~department shall adopt rules that:

(a) regulate the type and amount of plastic and other materials in the medical waste stream and hazardous waste stream that may be a source of chlorine, in order to minimize the potential emission of chlorinated dioxins, furans, and carcinogens;

(b) require commercial medical waste and commercial hazardous waste incinerators to achieve the lowest achievable emission rate to prevent the public health risk from air emissions or ambient concentrations from exceeding the negligible risk standard required by 75-2-215 and any applicable federal allowable intake standards, as determined pursuant to subsection (3), for dioxins, furans, heavy metals, and other hazardous air pollutants;

(c) implement the requirements of subsection (2), including establishing procedures and standards for the collection of high-quality scientific information and for the submission of the information by the applicant;

(d) establish procedures for the monitoring, testing, and inspection of:

(i) the medical waste stream and hazardous waste stream, including heavy metals and possible precursors to the formation of chlorinated dioxins, furans, and carcinogens;

(ii) combustion, including destruction and removal efficiencies; and

(iii) emissions, including continuous emission monitoring and air pollution control devices; and

(e) are necessary to implement the provisions of this section and to coordinate the requirements under this section with the requirements contained in 75-2-211 and 75-2-215.

(2) A person who applies for an air quality permit or alteration pursuant to 75-2-211 and 75-2-215 for a commercial medical waste incinerator or commercial hazardous waste incinerator shall provide, to the satisfaction of the department, the following information:

(a) a dispersion model of emissions, using approved methods, and those studies that are necessary to identify the potential community exposure;

(b) an analysis of the potential pathways for human exposure to air contaminants, particularly chlorinated dioxins, furans, heavy metals, and other carcinogens, including the potential for inhalation, ingestion, and physical contact by the affected communities; and

(c) a quantitative analysis of the estimated total possible human exposure to chlorinated dioxins,

1 furans, heavy metals, and carcinogens for the affected communities.

2 (3) The department may not issue or alter an air quality permit pursuant to this chapter until the
3 department has determined, based upon an analysis of the information provided by the applicant pursuant to
4 subsection (2) and other necessary and relevant data, that the public health risk from air emissions or ambient
5 concentrations of chlorinated dioxins, furans, heavy metals, and other hazardous air pollutants will not exceed
6 the negligible risk standard required by 75-2-215 and any applicable federal standards for allowable intake, as
7 determined by the department after a review of established and relevant federal standards and guidelines.

8 (4) This section may not be construed in any way to:

9 (a) require the ~~board~~ department to promulgate standards for the allowable intake of any substances
10 for which the federal government has not established standards;

11 (b) allow the ~~board~~ department to promulgate standards for the allowable intake of any substances for
12 which the federal government has established standards that are more stringent than the federal standards; or

13 (c) limit or otherwise impair the duty of the department under 75-2-215 to determine that emissions
14 and ambient concentrations will constitute a negligible risk as required by 75-2-215(3)(d), including emissions
15 and ambient concentrations of dioxins, furans, heavy metals, and carcinogens, before issuing an air quality
16 permit pursuant to 75-2-211 and 75-2-215."

17

18 **Section 25.** Section 75-2-234, MCA, is amended to read:

19 **"75-2-234. Registration.** The ~~board~~ department may adopt rules for the registration of certain classes
20 of sources of air contaminants in lieu of a permit application required under 75-2-211(2)."

21

22 **Section 26.** Section 75-2-301, MCA, is amended to read:

23 **"75-2-301. Local air pollution control programs -- consistency with state and federal**
24 **regulations -- procedure for public notice and comment required.** (1) After public hearing, a municipality or
25 county may establish and administer a local air pollution control program if the program is consistent with this
26 chapter and is approved by the ~~board~~ department.

27 (2) If a local air pollution control program established by a county encompasses all or part of a
28 municipality, the county and each municipality shall approve the program in accordance with subsection (1).

(3) (a) Except as provided in subsection (5), the ~~board~~ department by order may approve a local air pollution control program that:

(i) subject to subsection (4), provides by rule, ordinance, or local law for requirements compatible with, more stringent than, or more extensive than those imposed by 75-2-203, 75-2-204, 75-2-211, 75-2-212, 75-2-215, 75-2-217 through 75-2-219, and 75-2-402 and rules adopted under these sections;

(ii) provides for the enforcement of requirements established under subsection (3)(a)(i) by appropriate administrative and judicial processes; and

(iii) provides for administrative organization, staff, financial resources, and other resources necessary to effectively and efficiently carry out the program. As part of meeting these requirements, a local air pollution control program may administer the permit or registration fee provisions of 75-2-220. The permit or registration fees collected by a local air pollution control program must be deposited in a county special revenue fund to be used by the local air pollution control program for administration of local air pollution control program permitting or registration activities.

(b) ~~Board~~ Department approval of a rule, ordinance, or local law that is more stringent than the comparable state law is subject to the provisions of subsection (4).

(4) (a) A local air pollution control program may, subject to approval by the ~~board~~ department, adopt a rule, ordinance, or local law to implement this chapter that is more stringent than comparable state or federal regulations or guidelines only if:

(i) a public hearing is held;

(ii) public comment is allowed; and

(iii) the ~~board~~ department or the local air pollution control program makes a written finding after the public hearing and comment period that is based on evidence in the record that the proposed local standard or requirement:

(A) protects public health or the environment of the area;

(B) can mitigate harm to the public health or the environment; and

(C) is achievable with current technology.

(b) The written finding required under subsection (4)(a)(iii) must reference information and peer-reviewed scientific studies contained in the record that form the basis for the ~~board's~~ department's or the local

1 air pollution control program's conclusion. The written finding must also include information from the hearing
2 record regarding costs to the regulated community that are directly attributable to the proposed local standard
3 or requirement.

4 (c) (i) A person or entity affected by a rule, ordinance, or local law approved or adopted after January
5 1, 1996, and before May 1, 2001, that the person or entity believes is more stringent than comparable state or
6 federal regulations or guidelines may petition the board-department or the local air pollution control program to
7 review the rule, ordinance, or local law.

8 (ii) If the board-department or local air pollution control program determines that the rule, ordinance, or
9 local law is more stringent than state or federal regulations or guidelines, the board-department or local air
10 pollution control program shall either revise the rule, ordinance, or local law to conform to the state or federal
11 regulations or guidelines or follow the process provided in subsections (4)(a) and (4)(b) within a reasonable
12 period of time, not to exceed 6 months after receiving the petition.

13 (5) Except for those emergency powers provided for in 75-2-402, the board-department may not
14 delegate to a local air pollution control program the authority to control any air pollutant source that:

15 (a) requires the preparation of an environmental impact statement in accordance with Title 75,
16 chapter 1, part 2;

17 (b) is subject to regulation under the Montana Major Facility Siting Act, as provided in Title 75, chapter
18 20; or

19 (c) has the potential to emit 250 tons a year or more of any pollutant subject to regulation under this
20 chapter, including fugitive emissions, unless the authority to control the source was delegated to a local air
21 pollution control program prior to January 1, 1991.

22 (6) If the board-department finds that the location, character, or extent of particular concentrations of
23 population, air pollutant sources, or geographic, topographic, or meteorological considerations or any
24 combination of these makes impracticable the maintenance of appropriate levels of air quality without an
25 areawide air pollution control program, the board-department may determine the boundaries within which the
26 program is necessary and require it as the only acceptable alternative to direct state administration.

27 (7) If the board-department has reason to believe that any part of an air pollution control program in
28 force under this section is either inadequate to prevent and control air pollution in the jurisdiction to which the

1 program relates or is being administered in a manner inconsistent with this chapter, the ~~board~~-department shall,
2 on notice, conduct a hearing on the matter.

3 (8) If, after the hearing, the ~~board~~-department determines that any part of the program is inadequate
4 to prevent and control air pollution in the jurisdiction to which it relates or that it is not accomplishing the
5 purposes of this chapter, it shall require that necessary corrective measures be taken within a reasonable time,
6 not to exceed 60 days.

7 (9) If the jurisdiction fails to take these measures within the time required, the department shall
8 administer within that jurisdiction all of the provisions of this chapter, including the terms contained in any
9 applicable ~~board~~-department order, that are necessary to correct the deficiencies found by the ~~board~~
10 department. The department's control program supersedes all municipal or county air pollution laws, rules,
11 ordinances, and requirements in the affected jurisdiction. The cost of the department's action is a charge on the
12 jurisdiction.

13 (10) If the ~~board~~-department finds that the control of a particular air pollutant source because of its
14 complexity or magnitude is beyond the reasonable capability of the local jurisdiction or may be more efficiently
15 and economically performed at the state level, it may ~~direct the department to~~ assume and retain control over
16 that air pollutant source. A charge may not be assessed against the jurisdiction. Findings made under this
17 subsection may be either on the basis of the nature of the sources involved or on the basis of their relationship
18 to the size of the communities in which they are located.

19 (11) A jurisdiction in which the department administers all or part of its air pollution control program
20 under subsection (9) may, ~~with the approval of the board,~~ establish or resume an air pollution control program
21 that meets the requirements of subsection (3).

22 (12) A municipality or county may administer all or part of its air pollution control program in
23 cooperation with one or more municipalities or counties of this state or of other states.

24 (13) Local air pollution control programs established under this section shall provide procedures for
25 public notice, public hearing, public comment, and appeal for any proposed new or revised rules, ordinances, or
26 local laws adopted pursuant to this section. The procedures must comply with the following requirements:

27 (a) The local air pollution control program shall create and maintain a list of interested persons who
28 wish to be informed of actions related to rules, ordinances, or local laws adopted by the local air pollution

1 control program.

2 (b) At least 30 days prior to the adoption, revision, or repeal of a rule, ordinance, or law, the local air
3 pollution control program shall give written notice of its intended action.

4 (c) The notice required under subsection (13)(b) must include:

5 (i) a statement of the terms or substance of the intended action or a description of the subjects and
6 issues affected by the intended action;

7 (ii) an explanation of the procedure for a person to be included on the list of interested persons
8 established pursuant to subsection (13)(a);

9 (iii) an explanation of the procedures and deadlines for presentation of oral or written comments
10 related to the intended action;

11 (iv) an explanation of the process for requesting a public hearing as provided in subsection (13)(f); and

12 (v) the rationale for the intended action. The rationale must:

13 (A) include an explanation of why the intended action is reasonably necessary to implement the goals
14 and purposes of the local air pollution control program;

15 (B) specifically address those intended actions for which there are no similar state or federal
16 regulations or guidelines; and

17 (C) be written in plain, easily understood language.

18 (d) For the purposes of subsection (13)(c)(v), a statement of authority to adopt a rule, ordinance, or
19 local law does not, standing alone, constitute a showing of reasonable necessity for the intended action.

20 (e) The local air pollution control program shall mail a copy of the proposed rule, ordinance, or local
21 law to all interested persons on the list established pursuant to subsection (13)(a) who have made timely
22 requests to be included on the list.

23 (f) If at least 10 of the persons who will be directly affected by the proposed rule, ordinance, or local
24 law request a public hearing, the local air pollution control program shall hold a hearing to hear comments from
25 the public on the intended action.

26 (g) The local air pollution control program shall prepare a written response to all comments submitted
27 in writing or presented at the public hearing for consideration prior to adoption, revision, or repeal of the
28 proposed rule, ordinance, or local law.

(h) A person who submits a written comment on a proposed action or who attends a public hearing in regard to a proposed action must be informed of the final action."

Section 27. Section 75-2-302, MCA, is amended to read:

"75-2-302. State and federal aid. (1) Any local air pollution control program meeting the requirements of this chapter and rules made pursuant ~~thereto shall be~~ to this chapter is eligible for state aid in an amount up to 30% of the locally funded annual operating cost ~~thereof~~ of the program.

(2) Federal aid granted to the state for developing or maintaining a local air pollution control program that is subsequently granted to a local program is not considered state aid.

(3) Subdivisions of the state may make application for, receive, administer, and expend any federal aid for the control of air pollution or the development and administration of programs related to air pollution control, provided the program is currently approved by the ~~board~~ department under 75-2-301."

~~**Section 35.** Section 75-2-401, MCA, is amended to read:~~

~~**"75-2-401. Enforcement -- notice -- order for corrective action -- administrative penalty. (1)**
When the department believes that a violation of this chapter, a rule adopted under this chapter, or a condition or limitation imposed by a permit issued pursuant to this chapter has occurred, it may cause written notice to be served personally or by certified mail on the alleged violator or the violator's agent. The notice must specify the provision of this chapter, the rule, or the permit condition or limitation alleged to be violated and the facts alleged to constitute a violation. The notice may include an order to take necessary corrective action within a reasonable period of time stated in the order or an order to pay an administrative penalty, or both. The order becomes final unless, within 30 days after the notice is received, the person named requests in writing a hearing before the board department. On receipt of the request, the board department shall schedule a hearing.~~

~~(2) If, after a hearing held under subsection (1), the board department finds that violations have occurred, it shall issue an appropriate order for the prevention, abatement, or control of the emissions involved or for the taking of other corrective action or assess an administrative penalty, or both. As appropriate, an order issued as part of a notice or after a hearing may prescribe the date by which the violation must cease; time limits for particular action in preventing, abating, or controlling the emissions; or the date by which the~~

~~administrative penalty must be paid. If, after a hearing on an order contained in a notice, the board department finds that a violation has not occurred or is not occurring, it shall rescind the order.~~

~~(3)—(a) An action initiated under this section may include an administrative civil penalty of not more than \$10,000 for each day of each violation, not to exceed a total of \$80,000. If an order issued by the board department under this section requires the payment of an administrative civil penalty, the board department shall state findings and conclusions describing the basis for its penalty assessment.~~

~~(b)—Administrative penalties collected under this section must be deposited in the alternative energy revolving loan account established in 75-25-101.~~

~~(c)—Penalties imposed by an administrative order under this section may not be assessed for any day of violation that occurred more than 2 years prior to the issuance of the initial notice and order by the department under subsection (1).~~

~~(d)—In determining the amount of penalty to be assessed for an alleged violation under this section, the department or board, as appropriate, shall consider the penalty factors in 75-1-1001.~~

~~(e)—The department may bring a judicial action to enforce a final administrative order issued pursuant to this section. The action must be filed in the district court of the county in which the violation occurred or, if mutually agreed on by the parties in the action, in the district court of the first judicial district, Lewis and Clark County.~~

~~(4)—The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing conducted under this section.~~

~~(5)—Instead of issuing the order provided for in subsection (1), the department may either:~~

~~(a)—require that the alleged violators appear before the board department for a hearing at a time and place specified in the notice and answer the charges complained of; or~~

~~(b)—initiate action under 75-2-412 or 75-2-413.~~

~~(6)—This chapter does not prevent the board or department from making efforts to obtain voluntary compliance through warning, conference, or any other appropriate means.~~

~~(7)—In connection with a hearing held under this section, the board department may and on application by a party shall compel the attendance of witnesses and the production of evidence on behalf of the parties."~~

1 **Section 28.** ~~Section 75-2-402, MCA, is amended to read:~~

2 ~~"75-2-402. —Emergency procedure. (1) Any other law to the contrary notwithstanding, if the~~
3 ~~department finds that a generalized condition of air pollution exists and that it creates an emergency requiring~~
4 ~~immediate action to protect human health or safety, the department shall order persons causing or contributing~~
5 ~~to the air pollution to immediately reduce or discontinue the emission of air contaminants. Upon issuance of this~~
6 ~~order, the department shall fix a place and time within 24 hours for a hearing to be held before the board~~
7 ~~department. Within 24 hours after the start of the hearing and without adjournment, the board department shall~~
8 ~~confirm, modify, or set aside the order of the department.~~

9 ~~(2) Except as provided in subsection (1), if the department finds that emissions from the operation of~~
10 ~~one or more air contaminant sources are causing imminent danger to human health or safety, it may order the~~
11 ~~person responsible for the operation in question to reduce or discontinue emissions immediately, without regard~~
12 ~~for 75-2-401. In this event, the requirements for hearing and confirmation, modification, or setting aside of~~
13 ~~orders as provided in subsection (1) apply.~~

14 ~~(3) This section does not limit any power that the governor or any other officer may have to declare an~~
15 ~~emergency and act on the basis of this declaration, whether the power is conferred by statute or the constitution~~
16 ~~or is inherent to the office."~~

17
18 **Section 29.** ~~Section 75-2-411, MCA, is amended to read:~~

19 ~~"75-2-411. —Judicial review. (1) A person aggrieved by an order of the board department or local~~
20 ~~control authority may apply for rehearing upon one or more of the following grounds and upon no other~~
21 ~~grounds:~~

- 22 ~~(a) the board department or local control authority acted without or in excess of its powers;~~
23 ~~(b) the order was procured by fraud;~~
24 ~~(c) the order is contrary to the evidence;~~
25 ~~(d) the applicant has discovered new evidence, material to the applicant, that the applicant could not~~
26 ~~with reasonable diligence have discovered and produced at the hearing; or~~
27 ~~(e) competent evidence was excluded to the prejudice of the applicant.~~
28 ~~(2) The petition must be in a form and filed at a time that the board department prescribes.~~

~~(3) (a) Within 30 days after the application for rehearing is denied or, if the application is granted, within 30 days after the decision on the rehearing, an aggrieved party may appeal to the district court of the judicial district of the state that is the situs of property affected by the order.~~

~~(b) The appeal must be taken by serving a written notice of appeal upon the presiding officer of the board department. Service must be made by the delivery of a copy of the notice to the presiding officer department and by filing the original with the clerk of the court to which the appeal is taken. Immediately after service upon the board, the board department shall certify to the district court the entire record and proceedings, including all testimony and evidence taken by the board department. Immediately upon receiving the certified record, the district court shall fix a day for filing of briefs and hearing arguments on the cause and shall cause a notice of the dates to be served upon the board department and the appellant.~~

~~(c) The court shall hear and decide the cause upon the record of the board department. The court shall determine whether or not the board department regularly pursued its authority, whether or not the findings of the board department were supported by substantial competent evidence, and whether or not the board department made errors of law prejudicial to the appellant.~~

~~(4) Either the board department or the person aggrieved may appeal from the decision of the district court to the supreme court. The proceedings before the supreme court must be limited to a review of the record of the hearing before the board department and of the district court's review of that record."~~

Section 30. ~~Section 75-2-421, MCA, is amended to read:~~

~~"75-2-421. Persons subject to noncompliance penalties -- exemptions. (1) Except as provided in subsection (2), the department may assess and collect a noncompliance penalty from any person who owns or operates:~~

~~(a) a stationary source (other than a primary nonferrous smelter that has received a nonferrous smelter order under 42 U.S.C. 7419) that is not in compliance with any emission limitation specified in an order of the board department, emission standard, or compliance schedule under the state implementation plan approved by the federal environmental protection agency;~~

~~(b) a stationary source that is not in compliance with an emission limitation, emission standard, standard of performance, or other requirement under this chapter or 42 U.S.C. 7411, 7412, 7477, or 7603;~~

~~(c)—a stationary source that is not in compliance with any other requirement under this chapter or any requirement of Subchapter V of the federal Clean Air Act, 42 U.S.C. 7661, et seq.; or~~

~~(d)—any source referred to in subsections (1)(a), (1)(b), or (1)(c) that has been granted an exemption, extension, or suspension under subsection (2) or that is covered by a compliance order, or a primary nonferrous smelter that has received a primary nonferrous smelter order under 42 U.S.C. 7419, if that source is not in compliance with any interim emission control requirement or schedule of compliance under the extension, order, or suspension.~~

~~(2)—Notwithstanding the requirements of subsection (1), the department may, after notice and opportunity for a public hearing, exempt any source from the requirements of 75-2-421 through 75-2-429 with respect to a particular instance of noncompliance that:~~

~~(a)—the department finds is de minimis in nature and in duration;~~

~~(b)—is caused by conditions beyond the reasonable control of the source and is of no demonstrable advantage to the source; or~~

~~(c)—is exempt under 42 U.S.C. 7420(a)(2)(B) of the federal Clean Air Act.~~

~~(3)—Any person who is jointly or severally adversely affected by the department's decision may request, within 15 days after the department renders its decision, upon affidavit setting forth the grounds for it, a hearing before the board department. A hearing must be held under the provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6."~~

Section 31. Section 75-2-422, MCA, is amended to read:

"75-2-422. Amount of noncompliance penalty -- late charge. (1) The amount of the penalty ~~which that shall be~~ is assessed and collected with respect to any source under 75-2-421 through 75-2-429 ~~shall must~~ be equal to:

(a) the amount determined in accordance with the rules adopted by the ~~board~~ department, which ~~shall must~~ be no less than the economic value ~~which that~~ a delay in compliance after July 1, 1979, may have for the owner of ~~such the~~ source, including the quarterly equivalent of the capital costs of compliance and debt service over a normal amortization period not to exceed 10 years, operation and maintenance costs foregone as a result of noncompliance, and any additional economic value ~~which such a that the~~ delay may have for the

1 owner or operator of such source; minus

2 (b) the amount of any expenditure made by the owner or operator of that source during ~~any such the~~
3 quarter for the purpose of bringing that source into and maintaining compliance with ~~such the~~ requirement, to
4 the extent that ~~such the~~ expenditures have not been taken into account in the calculation of the penalty under
5 subsection (1)(a).

6 (2) To the extent that any expenditure under subsection (1)(b) made during any quarter is not
7 subtracted for ~~such the~~ quarter from the costs under subsection (1)(a), ~~such the~~ expenditure may be subtracted
8 for any subsequent quarter from ~~such the~~ costs. In no event may the amount paid be less than the quarterly
9 payment minus the amount attributed to actual cost of construction.

10 (3) If the owner or operator of any stationary source to whom notice is issued under 75-2-425 does
11 not submit a timely petition under 75-2-425(2)(b) or submits a petition ~~which that~~ is denied and if the owner or
12 operator fails to submit a calculation of the penalty assessment, a schedule for payment, and the information
13 necessary for independent verification thereof, the department may enter into a contract with any person who
14 has no financial interest in the matter to assist in determining the amount of the penalty assessment or payment
15 schedule with respect to ~~such the~~ source. The cost of carrying out ~~such the~~ contract may be added to the
16 penalty to be assessed against the owner or operator of ~~such the~~ source.

17 (4) Any person who fails to pay the amount of any penalty with respect to any source under 75-2-421
18 through 75-2-429 on a timely basis shall ~~be required to pay~~ in addition a quarterly nonpayment penalty for each
19 quarter during which ~~such the~~ failure to pay persists. ~~Such The~~ nonpayment penalty ~~shall be~~ is equal to 20% of
20 the aggregate amount of ~~such the~~ person's penalties and nonpayment penalties with respect to ~~such the~~ source
21 ~~which that~~ are unpaid as of the beginning of ~~such the~~ quarter."

22

23 **Section 32.** ~~Section 75-2-425, MCA, is amended to read:~~

24 ~~"75-2-425. Notice of noncompliance — challenge. (1) The department shall give a brief but~~
25 ~~reasonably specific notice of noncompliance to each person who owns or operates a source subject to 75-2-~~
26 ~~421(1) which that is not in compliance as provided in that subsection, within 30 days after the department has~~
27 ~~discovered the noncompliance.~~

28 ~~(2) — Each person to whom notice has been given pursuant to subsection (1) shall:~~

~~(a) calculate the amount of penalty owed (determined in accordance with 75-2-422(1)) and the schedule of payments (determined in accordance with 75-2-423) for each source and, within 45 days after issuance of the notice of noncompliance, submit that calculation and proposed schedule, together with the information necessary for an independent verification thereof, to the department; or~~

~~(b) submit to the board department a petition within 45 days after the issuance of such the notice, challenging such the notice of noncompliance or alleging entitlement to an exemption under 75-2-421(2) with respect to a particular source.~~

~~(3) Each person to whom notice of noncompliance is given shall pay the department the amount determined under 75-2-422 as the appropriate penalty unless there has been a final determination granting a petition filed pursuant to subsection (2)(b)."~~

Section 33. ~~Section 75-2-426, MCA, is amended to read:~~

~~"75-2-426. Hearing on challenge. (1) The board department shall provide a hearing on the record and make a decision (including findings of fact and conclusions of law) not later than 90 days after the receipt of any petition under 75-2-425(2)(b) with respect to such the source.~~

~~(2) If the petition is denied, the petitioner shall submit the material required by 75-2-425(2)(a) to the department within 45 days of the date of decision."~~

Section 34. Section 75-2-428, MCA, is amended to read:

"75-2-428. Effect of new standards on noncompliance penalty. In the case of any emission limitation, emission standard, or other requirement approved or adopted by the ~~board~~ department under this chapter after July 1, 1979, and approved by the federal environmental protection agency as an amendment to the state implementation plan, which is more stringent than the emission limitation or requirement for the source in effect prior to such approval or promulgation, if any, or where there was no emission limitation, emission standard, or other requirement approved or adopted before July 1, 1979, the date for imposition of the noncompliance penalty under 75-2-421 through 75-2-429 shall be the date on which the source is required to be in full compliance with such emission limitation, emission standard, or other requirement or 3 years after the approval or promulgation of such emission limitation or requirement, whichever is sooner."

1
2 **Section 35.** ~~Section 75-2-515, MCA, is amended to read:~~

3 ~~"75-2-515. **Administrative enforcement.** (1) The department may deny, suspend, or revoke the~~
4 ~~accreditation of a person that:~~

5 ~~(a) fraudulently or deceptively obtains or attempts to obtain accreditation;~~

6 ~~(b) fails to meet the qualifications for accreditation or fails to comply with the requirements of this part,~~
7 ~~a rule adopted under this part, or a permit or order issued under this part; or~~

8 ~~(c) fails to meet an applicable federal or state standard for asbestos projects.~~

9 ~~(2) When the department believes that a violation of this part, a rule adopted under this part, or a~~
10 ~~permit or order issued under this part has occurred, it may serve written notice of the violation personally or by~~
11 ~~certified mail on the alleged violator or the violator's agent. The notice must specify the provision of this part or~~
12 ~~the rule, permit, or order alleged to be violated and the facts alleged to constitute a violation. The notice may~~
13 ~~include an order to take necessary corrective action within a reasonable period of time stated in the order, an~~
14 ~~order to pay an administrative civil penalty, or both. An order becomes final unless, within 30 days after the~~
15 ~~order is received, the person that has been named requests, in writing, a hearing before the board department.~~

16 ~~(3) On receipt of a hearing request, the board department shall schedule a hearing. The contested~~
17 ~~case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to any hearing~~
18 ~~conducted under this section. If, after a hearing, the board department finds that a violation has not occurred or~~
19 ~~is not occurring, it shall rescind the order.~~

20 ~~(4) (a) An action initiated under this section may include an administrative civil penalty of not more~~
21 ~~than \$10,000 for each day of each violation, not to exceed a total of \$80,000. Any order issued by the~~
22 ~~department under this section requiring payment of an administrative civil penalty must specify the basis for the~~
23 ~~penalty assessment.~~

24 ~~(b) A penalty may not be assessed under this section for any day of violation that occurred more than~~
25 ~~3 years prior to the department issuing the order requiring payment of the penalty.~~

26 ~~(c) In determining the amount of a penalty assessed to a person under this section, the department~~
27 ~~shall consider the penalty factors in 75-1-1001.~~

28 ~~(5) In addition to or instead of issuing an order under subsection (2), the department may:~~

~~(a) require the alleged violator to appear before the board department for a hearing at a time and place specified in the notice of hearing to answer the charges complained of; or~~
~~(b) initiate action under 75-2-514."~~

Section 36. Section 75-5-103, MCA, is amended to read:

"75-5-103. (Temporary) Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Associated supporting infrastructure" means:

(a) electric transmission and distribution facilities;

(b) pipeline facilities;

(c) aboveground ponds and reservoirs and underground storage reservoirs;

(d) rail transportation;

(e) aqueducts and diversion dams;

(f) devices or equipment associated with the delivery of an energy form or product produced at an energy development project; or

(g) other supporting infrastructure, as defined by ~~board~~ department rule, that is necessary for an energy development project.

(2) (a) "Base numeric nutrient standards" means numeric water quality criteria for nutrients in surface water that are adopted to protect the designated uses of a surface water body.

(b) The term does not include numeric water quality standards for nitrate, nitrate plus nitrite, or nitrite that are adopted to protect human health.

~~(3) "Board" means the board of environmental review provided for in 2-15-3502.~~

(3) "Board" means the board of environmental review provided for in 2-15-3502.

~~(4)(3)(4)~~ "Contamination" means impairment of the quality of state waters by sewage, industrial wastes, or other wastes, creating a hazard to human health.

~~(5)(4)(5)~~ "Council" means the water pollution control advisory council provided for in 2-15-2107.

~~(6)(5)(6)~~ (a) "Currently available data" means data that is readily available to the department at the time a decision is made, including information supporting its previous lists of water bodies that are threatened

1 or impaired.

2 (b) The term does not mean new data to be obtained as a result of department efforts.

3 ~~(7)(6)(7)~~ "Degradation" means a change in water quality that lowers the quality of high-quality waters
4 for a parameter. The term does not include those changes in water quality determined to be nonsignificant
5 pursuant to 75-5-301(5)(c).

6 ~~(8)(7)(8)~~ "Department" means the department of environmental quality provided for in 2-15-3501.

7 ~~(9)(8)(9)~~ "Disposal system" means a system for disposing of sewage, industrial, or other wastes and
8 includes sewage systems and treatment works.

9 ~~(10)(9)(10)~~ "Effluent standard" means a restriction or prohibition on quantities, rates, and
10 concentrations of chemical, physical, biological, and other constituents that are discharged into state waters.

11 ~~(11)(10)(11)~~ (a) "Energy development project" means each plant, unit, or other development and
12 associated developments, including any associated supporting infrastructure, designed for or capable of:

13 (i) generating electricity;

14 (ii) producing gas derived from coal;

15 (iii) producing liquid hydrocarbon products;

16 (iv) refining crude oil or natural gas;

17 (v) producing alcohol to be blended for ethanol-blended gasoline and that are eligible for a tax
18 incentive pursuant to Title 15, chapter 70, part 5;

19 (vi) producing biodiesel and that are eligible for a tax incentive for the production of biodiesel pursuant
20 to 15-32-701; or

21 (vii) transmitting electricity through an electric transmission line with a design capacity of equal to or
22 greater than 50 kilovolts.

23 (b) The term does not include a nuclear facility as defined in 75-20-1202.

24 ~~(12)(11)(12)~~ "Existing uses" means those uses actually attained in state waters on or after July 1,
25 1971, whether or not those uses are included in the water quality standards.

26 ~~(13)(12)(13)~~ "High-quality waters" means all state waters, except:

27 (a) ground water classified as of January 1, 1995, within the "III" or "IV" classifications established by
28 the board's department's classification rules; and

1 (b) surface waters that:

2 (i) are not capable of supporting any one of the designated uses for their classification; or

3 (ii) have zero flow or surface expression for more than 270 days during most years.

4 ~~(14)~~~~(13)~~~~(14)~~ "Impaired water body" means a water body or stream segment for which sufficient
5 credible data shows that the water body or stream segment is failing to achieve compliance with applicable
6 water quality standards.

7 ~~(15)~~~~(14)~~~~(15)~~ "Industrial waste" means a waste substance from the process of business or industry or
8 from the development of any natural resource, together with any sewage that may be present.

9 ~~(16)~~~~(15)~~~~(16)~~ "Interested person" means a person who has a real property interest, a water right, or an
10 economic interest that is or may be directly and adversely affected by the department's preliminary decision
11 regarding degradation of state waters, pursuant to 75-5-303. The term includes a person who has requested
12 authorization to degrade high-quality waters.

13 ~~(17)~~~~(16)~~~~(17)~~ "Load allocation" means the portion of a receiving water's loading capacity that is
14 allocated to one of its existing or future nonpoint sources or to natural background sources.

15 ~~(18)~~~~(17)~~~~(18)~~ "Loading capacity" means the mass of a pollutant that a water body can assimilate without
16 a violation of water quality standards. For pollutants that cannot be measured in terms of mass, it means the
17 maximum change that can occur from the best practicable condition in a surface water without causing a
18 violation of the surface water quality standards.

19 ~~(19)~~~~(18)~~~~(19)~~ "Local department of health" means the staff, including health officers, employed by a
20 county, city, city-county, or district board of health.

21 ~~(20)~~~~(19)~~~~(20)~~ "Metal parameters" includes but is not limited to aluminum, antimony, arsenic, beryllium,
22 barium, cadmium, chromium, copper, fluoride, iron, lead, manganese, mercury, nickel, selenium, silver,
23 thallium, and zinc.

24 ~~(21)~~~~(20)~~~~(21)~~ "Mixing zone" means an area established in a permit or final decision on nondegradation
25 issued by the department where water quality standards may be exceeded, subject to conditions that are
26 imposed by the department and that are consistent with the rules adopted by the ~~board~~ department.

27 ~~(22)~~~~(21)~~~~(22)~~ "Nutrient standards variance" means numeric water quality criteria for nutrients based on
28 a determination that base numeric nutrient standards cannot be achieved because of economic impacts or

1 because of the limits of technology. The term includes individual, general, and alternative nutrient standards
2 variances in accordance with 75-5-313.

3 ~~(23)~~(22)~~(23)~~ "Nutrient work group" means an advisory work group, convened by the department,
4 representing publicly owned and privately owned point sources of pollution, nonpoint sources of pollution, and
5 other interested parties that will advise the department on the base numeric nutrient standards, the
6 development of nutrient standards variances, and the implementation of those standards and variances
7 together with associated economic impacts.

8 ~~(24)~~(23)~~(24)~~ "Other wastes" means garbage, municipal refuse, decayed wood, sawdust, shavings,
9 bark, lime, sand, ashes, offal, night soil, oil, grease, tar, heat, chemicals, dead animals, sediment, wrecked or
10 discarded equipment, radioactive materials, solid waste, and all other substances that may pollute state waters.

11 ~~(25)~~(24)~~(25)~~ "Outstanding resource waters" means:

12 (a) state surface waters located wholly within the boundaries of areas designated as national parks or
13 national wilderness areas as of October 1, 1995; or

14 (b) other surface waters or ground waters classified by the ~~board~~department under the provisions of
15 75-5-316 and approved by the legislature.

16 ~~(26)~~(25)~~(26)~~ "Owner or operator" means a person who owns, leases, operates, controls, or supervises
17 a point source.

18 ~~(27)~~(26)~~(27)~~ "Parameter" means a physical, biological, or chemical property of state water when a
19 value of that property affects the quality of the state water.

20 ~~(28)~~(27)~~(28)~~ "Person" means the state, a political subdivision of the state, institution, firm, corporation,
21 partnership, individual, or other entity and includes persons resident in Canada.

22 ~~(29)~~(28)~~(29)~~ "Point source" means a discernible, confined, and discrete conveyance, including but not
23 limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, or vessel or
24 other floating craft, from which pollutants are or may be discharged.

25 ~~(30)~~(29)~~(30)~~ (a) "Pollution" means:

26 (i) contamination or other alteration of the physical, chemical, or biological properties of state waters
27 that exceeds that permitted by Montana water quality standards, including but not limited to standards relating
28 to change in temperature, taste, color, turbidity, or odor; or

(ii) the discharge, seepage, drainage, infiltration, or flow of liquid, gaseous, solid, radioactive, or other substance into state water that will or is likely to create a nuisance or render the waters harmful, detrimental, or injurious to public health, recreation, safety, or welfare, to livestock, or to wild animals, birds, fish, or other wildlife.

(b) The term does not include:

(i) a discharge, seepage, drainage, infiltration, or flow that is authorized under the pollution discharge permit rules adopted by the ~~board~~ department under this chapter;

(ii) activities conducted under this chapter that comply with the conditions imposed by the department in short-term authorizations pursuant to 75-5-308;

(iii) contamination of ground water within the boundaries of an underground mine using in situ coal gasification and operating in accordance with a permit issued under 82-4-221.

(c) Contamination referred to in subsection ~~(30)(b)(iii)~~ ~~(29)(b)(iii)~~ ~~(30)(b)(iii)~~ does not require a mixing zone.

~~(31)~~ ~~(30)~~ (31) "Sewage" means water-carried waste products from residences, public buildings, institutions, or other buildings, including discharge from human beings or animals, together with ground water infiltration and surface water present.

~~(32)~~ ~~(31)~~ (32) "Sewage system" means a device for collecting or conducting sewage, industrial wastes, or other wastes to an ultimate disposal point.

~~(33)~~ ~~(32)~~ (33) "Standard of performance" means a standard adopted by the ~~board~~ department for the control of the discharge of pollutants that reflects the greatest degree of effluent reduction achievable through application of the best available demonstrated control technology, processes, operating methods, or other alternatives, including, when practicable, a standard permitting no discharge of pollutants.

~~(34)~~ ~~(33)~~ (34) (a) "State waters" means a body of water, irrigation system, or drainage system, either surface or underground.

(b) The term does not apply to:

(i) ponds or lagoons used solely for treating, transporting, or impounding pollutants; or

(ii) irrigation waters or land application disposal waters when the waters are used up within the irrigation or land application disposal system and the waters are not returned to state waters.

1 ~~(35)~~~~(34)~~~~(35)~~ "Sufficient credible data" means chemical, physical, or biological monitoring data, alone or
2 in combination with narrative information, that supports a finding as to whether a water body is achieving
3 compliance with applicable water quality standards.

4 ~~(36)~~~~(35)~~~~(36)~~ "Threatened water body" means a water body or stream segment for which sufficient
5 credible data and calculated increases in loads show that the water body or stream segment is fully supporting
6 its designated uses but threatened for a particular designated use because of:

- 7 (a) proposed sources that are not subject to pollution prevention or control actions required by a
8 discharge permit, the nondegradation provisions, or reasonable land, soil, and water conservation practices; or
9 (b) documented adverse pollution trends.

10 ~~(37)~~~~(36)~~~~(37)~~ "Total maximum daily load" or "TMDL" means the sum of the individual waste load
11 allocations for point sources and load allocations for both nonpoint sources and natural background sources
12 established at a level necessary to achieve compliance with applicable surface water quality standards.

13 ~~(38)~~~~(37)~~~~(38)~~ "Treatment works" means works, including sewage lagoons, installed for treating or
14 holding sewage, industrial wastes, or other wastes.

15 ~~(39)~~~~(38)~~~~(39)~~ "Waste load allocation" means the portion of a receiving water's loading capacity that is
16 allocated to one of its existing or future point sources.

17 ~~(40)~~~~(39)~~~~(40)~~ "Water quality protection practices" means those activities, prohibitions, maintenance
18 procedures, or other management practices applied to point and nonpoint sources designed to protect,
19 maintain, and improve the quality of state waters. Water quality protection practices include but are not limited
20 to treatment requirements, standards of performance, effluent standards, and operating procedures and
21 practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from material storage.

22 ~~(41)~~~~(40)~~~~(41)~~ "Water well" means an excavation that is drilled, cored, bored, washed, driven, dug,
23 jetted, or otherwise constructed and intended for the location, diversion, artificial recharge, or acquisition of
24 ground water.

25 ~~(42)~~~~(41)~~~~(42)~~ "Watershed advisory group" means a group of individuals who wish to participate in an
26 advisory capacity in revising and reprioritizing the list of water bodies developed under 75-5-702 and in the
27 development of TMDLs under 75-5-703, including those groups or individuals requested by the department to
28 participate in an advisory capacity as provided in 75-5-704.

75-5-103. (Effective on occurrence of contingency) Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Associated supporting infrastructure" means:

(a) electric transmission and distribution facilities;

(b) pipeline facilities;

(c) aboveground ponds and reservoirs and underground storage reservoirs;

(d) rail transportation;

(e) aqueducts and diversion dams;

(f) devices or equipment associated with the delivery of an energy form or product produced at an energy development project; or

(g) other supporting infrastructure, as defined by ~~board~~ department rule, that is necessary for an energy development project.

(2) (a) "Base numeric nutrient standards" means numeric water quality criteria for nutrients in surface water that are adopted to protect the designated uses of a surface water body.

(b) The term does not include numeric water quality standards for nitrate, nitrate plus nitrite, or nitrite that are adopted to protect human health.

~~(3) "Board" means the board of environmental review provided for in 2-15-3502.~~

(3) "Board" means the board of environmental review provided for in 2-15-3502.

~~(4)(3)(4)~~ "Contamination" means impairment of the quality of state waters by sewage, industrial wastes, or other wastes, creating a hazard to human health.

~~(5)(4)(5)~~ "Council" means the water pollution control advisory council provided for in 2-15-2107.

~~(6)(5)(6)~~ (a) "Currently available data" means data that is readily available to the department at the time a decision is made, including information supporting its previous lists of water bodies that are threatened or impaired.

(b) The term does not mean new data to be obtained as a result of department efforts.

~~(7)(6)(7)~~ "Degradation" means a change in water quality that lowers the quality of high-quality waters for a parameter. The term does not include those changes in water quality determined to be nonsignificant pursuant to 75-5-301(5)(c).

~~(8)(7)(8)~~ "Department" means the department of environmental quality provided for in 2-15-3501.

~~(9)(8)(9)~~ "Disposal system" means a system for disposing of sewage, industrial, or other wastes and includes sewage systems and treatment works.

~~(10)(9)(10)~~ "Effluent standard" means a restriction or prohibition on quantities, rates, and concentrations of chemical, physical, biological, and other constituents that are discharged into state waters.

~~(11)(10)(11)~~ (a) "Energy development project" means each plant, unit, or other development and associated developments, including any associated supporting infrastructure, designed for or capable of:

(i) generating electricity;

(ii) producing gas derived from coal;

(iii) producing liquid hydrocarbon products;

(iv) refining crude oil or natural gas;

(v) producing alcohol to be blended for ethanol-blended gasoline and that are eligible for a tax incentive pursuant to Title 15, chapter 70, part 5;

(vi) producing biodiesel and that are eligible for a tax incentive for the production of biodiesel pursuant to 15-32-701; or

(vii) transmitting electricity through an electric transmission line with a design capacity of equal to or greater than 50 kilovolts.

(b) The term does not include a nuclear facility as defined in 75-20-1202.

~~(12)(11)(12)~~ "Existing uses" means those uses actually attained in state waters on or after July 1, 1971, whether or not those uses are included in the water quality standards.

~~(13)(12)(13)~~ "High-quality waters" means all state waters, except:

(a) ground water classified as of January 1, 1995, within the "III" or "IV" classifications established by the board's department's classification rules; and

(b) surface waters that:

(i) are not capable of supporting any one of the designated uses for their classification; or

(ii) have zero flow or surface expression for more than 270 days during most years.

~~(14)(13)(14)~~ "Impaired water body" means a water body or stream segment for which sufficient credible data shows that the water body or stream segment is failing to achieve compliance with applicable

1 water quality standards.

2 ~~(15)~~~~(14)~~~~(15)~~ "Industrial waste" means a waste substance from the process of business or industry or
3 from the development of any natural resource, together with any sewage that may be present.

4 ~~(16)~~~~(15)~~~~(16)~~ "Interested person" means a person who has a real property interest, a water right, or an
5 economic interest that is or may be directly and adversely affected by the department's preliminary decision
6 regarding degradation of state waters, pursuant to 75-5-303. The term includes a person who has requested
7 authorization to degrade high-quality waters.

8 ~~(17)~~~~(16)~~~~(17)~~ "Load allocation" means the portion of a receiving water's loading capacity that is
9 allocated to one of its existing or future nonpoint sources or to natural background sources.

10 ~~(18)~~~~(17)~~~~(18)~~ "Loading capacity" means the mass of a pollutant that a water body can assimilate without
11 a violation of water quality standards. For pollutants that cannot be measured in terms of mass, it means the
12 maximum change that can occur from the best practicable condition in a surface water without causing a
13 violation of the surface water quality standards.

14 ~~(19)~~~~(18)~~~~(19)~~ "Local department of health" means the staff, including health officers, employed by a
15 county, city, city-county, or district board of health.

16 ~~(20)~~~~(19)~~~~(20)~~ "Metal parameters" includes but is not limited to aluminum, antimony, arsenic, beryllium,
17 barium, cadmium, chromium, copper, fluoride, iron, lead, manganese, mercury, nickel, selenium, silver,
18 thallium, and zinc.

19 ~~(21)~~~~(20)~~~~(21)~~ "Mixing zone" means an area established in a permit or final decision on nondegradation
20 issued by the department where water quality standards may be exceeded, subject to conditions that are
21 imposed by the department and that are consistent with the rules adopted by the ~~board~~ department.

22 ~~(22)~~~~(21)~~~~(22)~~ "Nutrient standards variance" means numeric water quality criteria for nutrients based on
23 a determination that base numeric nutrient standards cannot be achieved because of economic impacts or
24 because of the limits of technology. The term includes individual, general, and alternative nutrient standards
25 variances in accordance with 75-5-313.

26 ~~(23)~~~~(22)~~~~(23)~~ "Nutrient work group" means an advisory work group, convened by the department,
27 representing publicly owned and privately owned point sources of pollution, nonpoint sources of pollution, and
28 other interested parties that will advise the department on the base numeric nutrient standards, the

1 development of nutrient standards variances, and the implementation of those standards and variances
2 together with associated economic impacts.

3 ~~(24)~~~~(23)~~~~(24)~~ "Other wastes" means garbage, municipal refuse, decayed wood, sawdust, shavings,
4 bark, lime, sand, ashes, offal, night soil, oil, grease, tar, heat, chemicals, dead animals, sediment, wrecked or
5 discarded equipment, radioactive materials, solid waste, and all other substances that may pollute state waters.

6 ~~(25)~~~~(24)~~~~(25)~~ "Outstanding resource waters" means:

7 (a) state surface waters located wholly within the boundaries of areas designated as national parks or
8 national wilderness areas as of October 1, 1995; or

9 (b) other surface waters or ground waters classified by the ~~board~~ department under the provisions of
10 75-5-316 and approved by the legislature.

11 ~~(26)~~~~(25)~~~~(26)~~ "Owner or operator" means a person who owns, leases, operates, controls, or supervises
12 a point source.

13 ~~(27)~~~~(26)~~~~(27)~~ "Parameter" means a physical, biological, or chemical property of state water when a
14 value of that property affects the quality of the state water.

15 ~~(28)~~~~(27)~~~~(28)~~ "Person" means the state, a political subdivision of the state, institution, firm, corporation,
16 partnership, individual, or other entity and includes persons resident in Canada.

17 ~~(29)~~~~(28)~~~~(29)~~ "Point source" means a discernible, confined, and discrete conveyance, including but not
18 limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, or vessel or
19 other floating craft, from which pollutants are or may be discharged.

20 ~~(30)~~~~(29)~~~~(30)~~ (a) "Pollution" means:

21 (i) contamination or other alteration of the physical, chemical, or biological properties of state waters
22 that exceeds that permitted by Montana water quality standards, including but not limited to standards relating
23 to change in temperature, taste, color, turbidity, or odor; or

24 (ii) the discharge, seepage, drainage, infiltration, or flow of liquid, gaseous, solid, radioactive, or other
25 substance into state water that will or is likely to create a nuisance or render the waters harmful, detrimental, or
26 injurious to public health, recreation, safety, or welfare, to livestock, or to wild animals, birds, fish, or other
27 wildlife.

28 (b) The term does not include:

(i) a discharge, seepage, drainage, infiltration, or flow that is authorized under the pollution discharge permit rules adopted by the ~~board~~ department under this chapter;

(ii) activities conducted under this chapter that comply with the conditions imposed by the department in short-term authorizations pursuant to 75-5-308;

(iii) contamination of ground water within the boundaries of a geologic storage reservoir, as defined in 82-11-101, by a carbon dioxide injection well in accordance with a permit issued pursuant to Title 82, chapter 11, part 1;

(iv) contamination of ground water within the boundaries of an underground mine using in situ coal gasification and operating in accordance with a permit issued under 82-4-221;

(c) Contamination referred to in subsections ~~(30)(b)(iii) and (30)(b)(iv)~~ (29)(b)(iii) and (29)(b)(iv) (30)(b)(iii) and (30)(b)(iv) does not require a mixing zone.

~~(31)~~ (30)(31) "Sewage" means water-carried waste products from residences, public buildings, institutions, or other buildings, including discharge from human beings or animals, together with ground water infiltration and surface water present.

~~(32)~~ (31)(32) "Sewage system" means a device for collecting or conducting sewage, industrial wastes, or other wastes to an ultimate disposal point.

~~(33)~~ (32)(33) "Standard of performance" means a standard adopted by the ~~board~~ department for the control of the discharge of pollutants that reflects the greatest degree of effluent reduction achievable through application of the best available demonstrated control technology, processes, operating methods, or other alternatives, including, when practicable, a standard permitting no discharge of pollutants.

~~(34)~~ (33)(34) (a) "State waters" means a body of water, irrigation system, or drainage system, either surface or underground.

(b) The term does not apply to:

(i) ponds or lagoons used solely for treating, transporting, or impounding pollutants; or

(ii) irrigation waters or land application disposal waters when the waters are used up within the irrigation or land application disposal system and the waters are not returned to state waters.

~~(35)~~ (34)(35) "Sufficient credible data" means chemical, physical, or biological monitoring data, alone or in combination with narrative information, that supports a finding as to whether a water body is achieving

1 compliance with applicable water quality standards.

2 ~~(36)(35)(36)~~ "Threatened water body" means a water body or stream segment for which sufficient
3 credible data and calculated increases in loads show that the water body or stream segment is fully supporting
4 its designated uses but threatened for a particular designated use because of:

5 (a) proposed sources that are not subject to pollution prevention or control actions required by a
6 discharge permit, the nondegradation provisions, or reasonable land, soil, and water conservation practices; or

7 (b) documented adverse pollution trends.

8 ~~(37)(36)(37)~~ "Total maximum daily load" or "TMDL" means the sum of the individual waste load
9 allocations for point sources and load allocations for both nonpoint sources and natural background sources
10 established at a level necessary to achieve compliance with applicable surface water quality standards.

11 ~~(38)(37)(38)~~ "Treatment works" means works, including sewage lagoons, installed for treating or
12 holding sewage, industrial wastes, or other wastes.

13 ~~(39)(38)(39)~~ "Waste load allocation" means the portion of a receiving water's loading capacity that is
14 allocated to one of its existing or future point sources.

15 ~~(40)(39)(40)~~ "Water quality protection practices" means those activities, prohibitions, maintenance
16 procedures, or other management practices applied to point and nonpoint sources designed to protect,
17 maintain, and improve the quality of state waters. Water quality protection practices include but are not limited
18 to treatment requirements, standards of performance, effluent standards, and operating procedures and
19 practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from material storage.

20 ~~(41)(40)(41)~~ "Water well" means an excavation that is drilled, cored, bored, washed, driven, dug,
21 jetted, or otherwise constructed and intended for the location, diversion, artificial recharge, or acquisition of
22 ground water.

23 ~~(42)(41)(42)~~ "Watershed advisory group" means a group of individuals who wish to participate in an
24 advisory capacity in revising and reprioritizing the list of water bodies developed under 75-5-702 and in the
25 development of TMDLs under 75-5-703, including those groups or individuals requested by the department to
26 participate in an advisory capacity as provided in 75-5-704."

27

28 **Section 37.** ~~Section 75-5-105, MCA, is amended to read:~~

~~"75-5-105.—Confidentiality of records. Except as provided in 80-15-108, any information concerning sources of pollution that is furnished to the board or department or that is obtained by either of them the department is a matter of public record and open to public use. However, any information unique to the owner or operator of a source of pollution that would, if disclosed, reveal methods or processes entitled to protection as trade secrets must be maintained as confidential if so determined by a court of competent jurisdiction. The owner or operator shall file a declaratory judgment action to establish the existence of a trade secret if the owner or operator wishes the information to remain confidential. The department must be served in the action and may intervene as a party. Any information not intended to be public when submitted to the board or department must be submitted in writing and clearly marked as confidential. Except as provided in 75-5-314, the data describing physical and chemical characteristics of a waste discharged to state waters may not be considered confidential. The board department may use any information in compiling or publishing analyses or summaries relating to water pollution if the analyses or summaries do not identify any owner or operator of a source of pollution or reveal any information that is otherwise made confidential by this section."~~

Section 38. Section 75-5-106, MCA, is amended to read:

"75-5-106. Interagency cooperation -- enforcement authorization. (1) The council, board, ~~board~~, and the department may require the use of records of all state agencies and may seek the assistance of the agencies. When the department's review of a permit application submitted under another chapter or title is required or requested, the department shall coordinate the review under this chapter with the review conducted by the agency or unit under the other chapter, following the time schedule for that review. State, county, and municipal officers and employees, including sanitarians and other employees of local departments of health, shall cooperate with the council, board, ~~board~~, and the department in furthering the purposes of this chapter, so far as is practicable and consistent with their other duties.

(2) The department may authorize a local water quality district established according to the provisions of Title 7, chapter 13, part 45, to enforce the provisions of this chapter and rules adopted under this chapter on a case-by-case basis. If a local water quality district requests the authorization, the local water quality district shall present appropriate documentation to the department that a person is violating permit requirements established by the department or may be causing pollution, as defined in 75-5-103, of state waters or placing or

causing to be placed wastes in a location where they are likely to cause pollution of state waters. The ~~board~~
department may adopt rules regarding the granting of enforcement authority to local water quality districts."

Section 39. Section 75-5-201, MCA, is amended to read:

"75-5-201. ~~Board rules~~Rules authorized. (1) (a) The ~~board~~department shall, except as provided in
75-5-411 and subject to the provisions of 75-5-203, adopt rules for the administration of this chapter.

(b) The ~~board~~department shall adopt rules that describe the location and the times of the year when
suction dredging is permissible. These rules may be adopted only after consultation with the local conservation
districts in the areas subject to the rule.

(2) The ~~board's~~department's rules may include a fee schedule or system for assessment of
administrative penalties as provided under 75-5-611."

Section 40. ~~Section 75-5-202, MCA, is amended to read:~~

~~"75-5-202. ~~Board hearings~~Hearings. The board department shall hold hearings necessary for the
proper administration of this chapter or, in the case of permit issuance hearings, delegate this function to the
department."~~

Section 41. Section 75-5-203, MCA, is amended to read:

"75-5-203. State regulations no more stringent than federal regulations or guidelines. (1) Except
as provided in subsections (2) through (5) or unless required by state law, the ~~board~~department may not adopt
a rule to implement 75-5-301, 75-5-302, 75-5-303, or 75-5-310 that is more stringent than the comparable
federal regulations or guidelines that address the same circumstances. The ~~board~~department may incorporate
by reference comparable federal regulations or guidelines.

(2) The ~~board~~department may adopt a rule to implement this chapter that is more stringent than
comparable federal regulations or guidelines only if the ~~board~~department makes a written finding after a public
hearing and public comment and based on evidence in the record that:

(a) the proposed state standard or requirement protects public health or the environment of the state;
and

(b) the state standard or requirement to be imposed can mitigate harm to the public health or environment and is achievable under current technology.

(3) The written finding must reference pertinent, ascertainable, and peer-reviewed scientific studies contained in the record that forms the basis for the ~~board's~~ department's conclusion. The written finding must also include information from the hearing record regarding the costs to the regulated community that are directly attributable to the proposed state standard or requirement.

(4) (a) A person affected by a rule ~~of the board that~~ that the person believes to be more stringent than comparable federal regulations or guidelines may petition the ~~board~~ department board to review the rule. If the ~~board~~ department board determines that the rule is more stringent than comparable federal regulations or guidelines, the ~~board~~ department shall comply with this section by either revising the rule to conform to the federal regulations or guidelines or by making the written finding, as provided under subsection (2), within a reasonable period of time, not to exceed 8 months after receiving the petition. A petition under this section does not relieve the petitioner of the duty to comply with the challenged rule. The ~~board~~ department may charge a petition filing fee in an amount not to exceed \$250.

(b) A person may also petition the ~~board~~ department board for a rule review under subsection (4)(a) if the ~~board~~ department adopts a rule in an area in which no federal regulations or guidelines existed and the federal government subsequently establishes comparable regulations or guidelines that are less stringent than the previously adopted ~~board~~ department rule.

(5) This section does not apply to a rule adopted under the emergency rulemaking provisions of 2-4-303(1)."

Section 42. Section 75-5-222, MCA, is amended to read:

"75-5-222. State regulation for natural conditions. (1) The department may not apply a standard to a water body for water quality that is more stringent than the nonanthropogenic condition of the water body. For the parameters for which the applicable standards are more stringent than the nonanthropogenic condition, the standard is the nonanthropogenic condition of the parameter in the water body. The department shall implement the standard in a manner that provides for the water quality standards for downstream waters to be attained and maintained.

(2) (a) For water bodies where the standard is more stringent than the condition of the water body but subsection (1) is not applicable, the ~~board~~ department shall adopt rules consistent with comparable federal rules and guidelines providing criteria and procedures for the department to issue variances from standards if:

(i) the condition cannot reasonably be expected to be remediated during the permit term for which the application for variance has been received; and

(ii) the discharge to which the variance applies would not materially contribute to the condition.

(b) A variance issued pursuant to subsection (2)(a) must be reviewed every 5 years and may be modified or terminated as a result of the review."

Section 43. Section 75-5-301, MCA, is amended to read:

"75-5-301. Classification and standards for state waters. Consistent with the provisions of 80-15-201 and this chapter, the ~~board~~ department shall:

(1) establish the classification of all state waters in accordance with their present and future most beneficial uses, creating an appropriate classification for streams that, due to sporadic flow, do not support an aquatic ecosystem that includes salmonid or nonsalmonid fish;

(2) formulate and adopt standards of water quality, ~~giving consideration to~~ considering the economics of waste treatment and prevention. When rules are adopted regarding temporary standards, they must conform with the requirements of 75-5-312. Standards ~~adopted by the board~~ department must meet the following requirements:

(a) for carcinogens, the water quality standard for protection of human health must be the value associated with an excess lifetime cancer risk level, assuming continuous lifetime exposure, not to exceed 1×10^{-3} in the case of arsenic and 1×10^{-5} for other carcinogens. However, if a standard established at a risk level of 1×10^{-3} for arsenic or 1×10^{-5} for other carcinogens violates the maximum contaminant level obtained from 40 CFR, part 141, then the maximum contaminant level must be adopted as the standard for that carcinogen.

(b) standards for the protection of aquatic life do not apply to ground water.

(3) review, from time to time at intervals of not more than 3 years and, to the extent permitted by this chapter, revise established classifications of waters and adopted standards of water quality;

(4) adopt rules governing the granting of mixing zones, requiring that mixing zones granted by the

1 department be specifically identified and requiring that mixing zones have:

2 (a) the smallest practicable size;

3 (b) a minimum practicable effect on water uses; and

4 (c) definable boundaries;

5 (5) adopt rules implementing the nondegradation policy established in 75-5-303, including but not
6 limited to rules that:

7 (a) provide a procedure for department review and authorization of degradation;

8 (b) establish criteria for the following:

9 (i) determining important economic or social development; and

10 (ii) weighing the social and economic importance to the public of allowing the proposed project against
11 the cost to society associated with a loss of water quality;

12 (c) establish criteria for determining whether a proposed activity or class of activities, in addition to
13 those activities identified in 75-5-317, will result in nonsignificant changes in water quality for any parameter in
14 order that those activities are not required to undergo review under 75-5-303(3). These criteria must be
15 established in a manner that generally:

16 (i) equates significance with the potential for harm to human health, a beneficial use, or the
17 environment;

18 (ii) considers both the quantity and the strength of the pollutant;

19 (iii) considers the length of time the degradation will occur;

20 (iv) considers the character of the pollutant so that greater significance is associated with carcinogens
21 and toxins that bioaccumulate or biomagnify and lesser significance is associated with substances that are less
22 harmful or less persistent.

23 (d) provide that changes of nitrate as nitrogen in ground water are nonsignificant if the discharge will
24 not cause degradation of surface water and the predicted concentration of nitrate as nitrogen at the boundary of
25 the ground water mixing zone does not exceed:

26 (i) 7.5 milligrams per liter from sources other than sewage;

27 (ii) 5.0 milligrams per liter from sewage discharged from a system that does not use level two
28 treatment in an area where the ground water nitrate as nitrogen is 5.0 milligrams per liter or less;

(iii) 7.5 milligrams per liter from sewage discharged from a system using level two treatment, which must be defined in the rules; or

(iv) 7.5 milligrams per liter from sewage discharged from a system in areas where the ground water nitrate as nitrogen level exceeds 5.0 milligrams per liter primarily from sources other than human waste.

(6) to the extent practicable, ensure that the rules adopted under subsection (5) establish objective and quantifiable criteria for various parameters. These criteria must, to the extent practicable, constitute guidelines for granting or denying applications for authorization to degrade high-quality waters under the policy established in 75-5-303(2) and (3).

(7) adopt rules to implement this section."

Section 44. Section 75-5-302, MCA, is amended to read:

"75-5-302. Revising classifications in accordance with existing, present, and future most beneficial uses of water bodies. When the ~~board or~~ department is presented with facts indicating that a body of water is not properly classified in accordance with its existing, present, and future most beneficial uses, the department shall, within 90 days, evaluate the facts and ~~advise the board whether the water body is not properly classified.~~ If the ~~board~~ department determines that the water body is not properly classified, the ~~board~~ department shall initiate rulemaking to properly classify the water body in accordance with its existing, present, and future most beneficial uses. ~~Board action~~ Action pursuant to this section is subject to 75-5-307."

Section 45. Section 75-5-303, MCA, is amended to read:

"75-5-303. Nondegradation policy. (1) Existing uses of state waters and the level of water quality necessary to protect those uses must be maintained and protected.

(2) Unless authorized by the department under subsection (3) or exempted from review under 75-5-317, the quality of high-quality waters must be maintained.

(3) The department may not authorize degradation of high-quality waters unless it has been affirmatively demonstrated by a preponderance of evidence to the department that:

(a) degradation is necessary because there are no economically, environmentally, and technologically feasible modifications to the proposed project that would result in no degradation;

(b) the proposed project will result in important economic or social development and that the benefit of the development exceeds the costs to society of allowing degradation of high-quality waters;

(c) existing and anticipated use of state waters will be fully protected; and

(d) the least degrading water quality protection practices determined by the department to be economically, environmentally, and technologically feasible will be fully implemented by the applicant prior to and during the proposed activity.

(4) The department shall issue a preliminary decision either denying or authorizing degradation and shall provide public notice and a 30-day comment period prior to issuing a final decision. The department's preliminary and final decisions must include:

(a) a statement of the basis for the decision; and

(b) a detailed description of all conditions applied to any authorization to degrade state waters, including, when applicable, monitoring requirements, required water protection practices, reporting requirements, effluent limits, designation of the mixing zones, the limits of degradation authorized, and methods of determining compliance with the authorization for degradation.

(5) An interested person wishing to challenge a final department decision may request a hearing before the ~~board~~ department board within 30 days of the final department decision. The contested case procedures of Title 2, chapter 4, part 6, apply to a hearing under this section.

(6) Periodically, but not more often than every 5 years, the department may review authorizations to degrade state waters. Following the review, the department may, after timely notice and opportunity for hearing, modify the authorization if the department determines that an economically, environmentally, and technologically feasible modification to the development exists. The decision by the department to modify an authorization may be appealed to the ~~board~~ department board.

(7) The ~~board~~ department may not issue an authorization to degrade state waters that are classified as outstanding resource waters.

(8) The ~~board~~ department shall adopt rules to implement this section."

Section 46. Section 75-5-304, MCA, is amended to read:

"75-5-304. Adoption of standards -- pretreatment, effluent, performance. (1) The ~~board~~

1 department shall:

- 2 (a) adopt pretreatment standards for wastewater discharged into a municipal disposal system;
- 3 (b) adopt effluent standards as defined in 75-5-103;
- 4 (c) adopt toxic effluent standards and prohibitions;
- 5 (d) establish standards of performance for new point source discharges; and
- 6 (e) adopt rules necessary to ensure the primacy of the department to regulate cooling water intake
- 7 structures under 33 U.S.C. 1326(b).

8 (2) In taking action under subsection (1), the ~~board~~department shall ensure that the standards are
9 cost-effective and economically, environmentally, and technologically feasible."

10

11 **Section 47.** Section 75-5-305, MCA, is amended to read:

12 **"75-5-305. Adoption of requirements for treatment of wastes -- variance procedure -- appeals.**

13 (1) The ~~board~~department may establish minimum requirements for the treatment of wastes. For cases in which
14 the federal government has adopted technology-based treatment requirements for a particular industry or
15 activity in 40 CFR, chapter I, subchapter N, the ~~board~~department shall adopt those requirements by reference.
16 To the extent that the federal government has not adopted minimum treatment requirements for a particular
17 industry or activity, the ~~board~~department may do so, through rulemaking, for parameters likely to affect
18 beneficial uses, ensuring that the requirements are cost-effective and economically, environmentally, and
19 technologically feasible. Except for the technology-based treatment requirements set forth in 40 CFR, chapter I,
20 subchapter N, minimum treatment may not be required to address the discharge of a parameter when the
21 discharge is considered nonsignificant under rules adopted pursuant to 75-5-301.

22 (2) (a) The ~~board~~department shall establish minimum requirements for the control and disposal of
23 sewage from private and public buildings, including standards and procedures for variances from the
24 requirements.

25 (b) For gray water reuse systems, the ~~board~~department shall establish rules that:

- 26 (i) allow the diversion of gray water from wastewater treatment systems and limit the amount of gray
- 27 water flow allowed by permit;
- 28 (ii) address the uses of gray water, including when and how gray water may be applied to land; and

(iii) include any other provisions that the ~~board~~department considers necessary to ensure that gray water reuse systems comply with laws and regulations and protect public health and the environment.

(3) An applicant for a variance from minimum requirements adopted by a local board of health pursuant to 50-2-116 may appeal the local board of health's final decision to the department by submitting a written request for a hearing within 30 days after the decision. The written request must describe the activity for which the variance is requested, include copies of all documents submitted to the local board of health in support of the variance, and specify the reasons for the appeal of the local board of health's final decision.

(4) The department shall conduct a hearing on the request pursuant to Title 2, chapter 4, part 6. Within 30 days after the hearing, the department shall grant, conditionally grant, or deny the variance. The department shall base its decision on the ~~board's~~department's standards for a variance.

(5) A decision of the department pursuant to subsection (4) is appealable to district court under the provisions of Title 2, chapter 4, part 7."

Section 48. Section 75-5-307, MCA, is amended to read:

"75-5-307. Hearings required for classification, formulation of standards, and rulemaking. (1) Before streams are classified or standards established or modified or rules made, revoked, or modified, the ~~board~~department shall hold a public hearing. Notice of the hearing specifying the waters concerned and the classification, standards, or modification of them and any rules proposed to be made, revoked, or modified ~~shall~~ must be published at least once a week for 3 consecutive weeks in a daily newspaper of general circulation in the area affected. Notice ~~shall also~~must be mailed directly to persons the ~~board~~department believes may be affected by the proposed action. The council ~~shall~~must be given not less than 30 days prior to first publication to comment on the proposed action.

(2) At a hearing held under this section, the ~~board~~department shall give all interested persons reasonable opportunity to submit data, views, or arguments, orally or in writing. The ~~board~~department may make rules for the orderly conduct of the hearing but need not require compliance with the rules of evidence or procedure applicable to hearings held under 75-5-611."

Section 49. Section 75-5-308, MCA, is amended to read:

1 **"75-5-308. Short-term water authorizations -- water quality standards.** (1) Because these
2 activities promote the public interest, the department may, if necessary, authorize short-term exemptions from
3 the water quality standards for the following activities:

4 (a) emergency remediation activities that have been approved, authorized, or required by the
5 department; and

6 (b) application of a pesticide that is registered by the United States environmental protection agency
7 pursuant to 7 U.S.C. 136(a) when it is used to control nuisance aquatic organisms or to eliminate undesirable
8 and nonnative aquatic species.

9 (2) An authorization must include conditions that minimize, to the extent practicable, the magnitude of
10 any change in the concentration of the parameters affected by the activity and the length of time during which
11 any change may occur. The authorization must also include conditions that prevent significant risk to public
12 health and that ensure that existing and designated uses of state water are protected and maintained upon
13 completion of the activity. Authorizations issued under this section may include conditions that require water
14 quality or quantity monitoring and reporting. In the performance of its responsibilities under this section, the
15 department may negotiate operating agreements with other departments of state government that are intended
16 to minimize duplication in review of activities eligible for authorizations under this section.

17 (3) An authorization to use a pesticide does not relieve a person from the duty to comply with Title 80,
18 chapters 8 and 15. The department may not authorize an exemption from water quality standards for an activity
19 that requires a discharge permit under rules adopted by the board pursuant to 75-5-401."
20

21 **Section 50.** Section 75-5-310, MCA, is amended to read:

22 **"75-5-310. Site-specific standards of water quality for aquatic life.** (1) Notwithstanding any other
23 provisions of this chapter and except as provided in subsection (2), the ~~board~~ department, upon application by
24 a permit applicant, permittee, or person potentially liable under any state or federal environmental remediation
25 statute, shall adopt site-specific standards of water quality for aquatic life, both acute and chronic, as the
26 standards of water quality required under 75-5-301(2) and (3). The site-specific standards of water quality must
27 be developed in accordance with the procedures set forth in draft or final federal regulations, guidelines, or
28 criteria.

(2) If the department, based upon its review of an application submitted under subsection (1) and sound scientific, technical, and available site-specific evidence, determines that the development of site-specific criteria in accordance with draft or final federal regulations, guidelines, or criteria would not be protective of beneficial uses, the department, within 90 days of the submission of an application under subsection (1), shall notify the applicant in writing of its determination and of all additional procedures that the applicant is required to comply with in the development of site-specific standards of water quality under this section. If there is a dispute between the department and the applicant as to the additional procedures, the ~~board~~ department-board shall, on the request of the department or the applicant, hear and determine the dispute. The ~~board's~~ department's-board's decision must be based on sound scientific, technical, and available site-specific evidence."

Section 51. Section 75-5-311, MCA, is amended to read:

"75-5-311. Local water quality districts -- ~~board~~ department approval -- local water quality programs. (1) A county that establishes a local water quality district according to the procedures specified in Title 7, chapter 13, part 45, shall, in consultation with the department, undertake planning and information-gathering activities necessary to develop a proposed local water quality program.

(2) A county may implement a local water quality program in a local water quality district if the program is approved by the ~~board~~ department after a hearing conducted under 75-5-202.

(3) In approving a local water quality program, the ~~board~~ department shall determine that the program is consistent with the purposes and requirements of Title 75, chapter 5, and that the program will be effective in protecting, preserving, and improving the quality of surface water and ground water, considering the administrative organization, staff, and financial and other resources available to implement the program.

(4) Subject to the ~~board's~~ department approval, the commissioners and the governing bodies of cities and towns that participate in a local water quality district may adopt local ordinances to regulate the following specific facilities and sources of pollution:

- (a) onsite wastewater disposal facilities;
- (b) storm water runoff from paved surfaces;
- (c) service connections between buildings and publicly owned sewer mains;

(d) facilities that use or store halogenated and nonhalogenated solvents, including hazardous substances that are referenced in 40 CFR 261.31, United States environmental protection agency hazardous waste numbers F001 through F005, as amended; and

(e) internal combustion engine lubricants.

(5) (a) For the facilities and sources of pollution included in subsection (4) and consistent with the provisions of subsection (6), the local ordinances may:

(i) be compatible with or more stringent or more extensive than the requirements imposed by 75-5-304, 75-5-305, and 75-5-401 through 75-5-404 and rules adopted under those sections to protect water quality, establish waste discharge permit requirements, and establish best management practices for substances that have the potential to pollute state waters;

(ii) provide for administrative procedures, administrative orders and actions, and civil enforcement actions that are consistent with 75-5-601 through 75-5-604, 75-5-611 through 75-5-616, 75-5-621, and 75-5-622 and rules adopted under those sections; and

(iii) provide for civil penalties not to exceed \$1,000 per violation, provided that each day of violation of a local ordinance constitutes a separate violation, and criminal penalties not to exceed \$500 per day of violation or imprisonment for not more than 30 days, or both.

(b) ~~Board~~ Department approval of an ordinance or local law that is more stringent than the comparable state law is subject to the provisions of 75-5-203.

(6) The local ordinances authorized by this section may not:

(a) duplicate the department's requirements and procedures relating to permitting of waste discharge sources and enforcement of water quality standards;

(b) regulate any facility or source of pollution to the extent that the facility or source is:

(i) required to obtain a permit or other approval from the department or federal government or is the subject of an administrative order, a consent decree, or an enforcement action pursuant to Title 75, chapter 5, part 4; Title 75, chapter 6; Title 75, chapter 10; the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9601 through 9675, as amended; or federal environmental, safety, or health statutes and regulations;

(ii) exempted from obtaining a permit or other approval from the department because the facility or

1 source is required to obtain a permit or other approval from another state agency or is the subject of an
2 enforcement action by another state agency; or

3 (iii) subject to the provisions of Title 80, chapter 8 or chapter 15.

4 (7) If the boundaries of a district are changed after the ~~board~~ department has approved the local
5 water quality program for the district, the board of directors of the local water quality district shall submit a
6 program amendment to the ~~board~~ department and obtain the ~~board's~~ department approval of the program
7 amendment before implementing the local water quality program in areas that have been added to the district.

8 (8) The department shall monitor the implementation of local water quality programs to ensure that
9 the programs are adequate to protect, preserve, and improve the quality of the surface water and ground water
10 and are being administered in a manner consistent with the purposes and requirements of Title 75, chapter 5. ~~If~~
11 ~~the department finds that a local water quality program is not adequate to protect, preserve, and improve the~~
12 ~~quality of the surface water and ground water or is not being administered in a manner consistent with the~~
13 ~~purposes and requirements of Title 75, chapter 5, the department shall report to the board.~~

14 (9) If the ~~board~~ department determines that a local water quality program is inadequate to protect,
15 preserve, and improve the quality of the surface water and ground water in the local water quality district or that
16 the program is being administered in a manner inconsistent with Title 75, chapter 5, the ~~board~~ department shall
17 give notice and conduct a hearing on the matter.

18 (10) If after the hearing the ~~board~~ department determines that the program is inadequate to protect,
19 preserve, and improve the quality of the surface water and ground water in the local water quality district or that
20 it is not being administered in a manner consistent with the purposes of Title 75, chapter 5, the ~~board~~
21 department shall require that necessary corrective measures be taken within a reasonable time, not to exceed
22 60 days.

23 (11) If an ordinance adopted under this section conflicts with a requirement imposed by the
24 department's water quality program, the department's requirement supersedes the local ordinance.

25 (12) If the ~~board~~ department finds that, because of the complexity or magnitude of a particular water
26 pollution source, the control of the source is beyond the reasonable capability of a local water quality district or
27 may be more efficiently and economically performed at the state level, the ~~board may direct the department to~~
28 may assume and retain control over the source. A charge may not be assessed against the local water quality

district for that source. Findings made under this subsection may be based on the nature of the source involved or on the source's relationship to the size of the community in which it is located."

Section 52. Section 75-5-312, MCA, is amended to read:

"75-5-312. Temporary water quality standards. (1) The ~~board-department~~ may, ~~upon recommendation of the department~~ on its own accord or upon a petition for rulemaking, as provided in 2-4-315, by a person, including a permit applicant or permittee, temporarily modify a water quality standard for a specific water body or segment on a parameter-by-parameter basis in those instances in which substantive information indicates that the water body or segment is not supporting its designated uses. When the ~~board-department~~ adopts temporary standards, the goal is to improve water quality to the point at which all the beneficial uses designated for that water body or segment are supported.

(2) As a condition for establishing temporary water quality standards for a particular water body or segment, the department or the petitioner, as applicable, shall prepare a support document and a preliminary implementation plan for use by the ~~board-department~~ in determining whether to adopt the proposed temporary water quality standards. A person shall submit a support document and a preliminary implementation plan to the department for its review at least 60 days prior to filing a petition with the ~~board-department~~ requesting the adoption of temporary water quality standards.

(3) The support document prepared by the department or the petitioner, as applicable, must describe:

- (a) the chemical, biological, and physical condition of the water body or segment;
- (b) the specific water quality limiting factors affecting the water body or segment;
- (c) the existing water quality standards that are not being achieved;
- (d) the temporary modifications to the existing water quality standards being requested;
- (e) existing beneficial uses; and
- (f) the designated uses considered attainable in the absence of the water quality limiting factors.

(4) The preliminary implementation plan prepared by the department or the petitioner, as applicable, must contain:

- (a) a description of the proposed actions that will eliminate the water quality limiting factors identified in subsection (3)(b) to the extent considered achievable; and

(b) a schedule for implementing the proposed actions that ensures that the existing water quality standards for the parameter or parameters at issue are met as soon as reasonably practicable.

(5) Within 30 days after the ~~board's~~ department's adoption of temporary water quality standards, the department or the petitioner, as applicable, shall:

(a) modify the preliminary implementation plan and schedule to reflect the requirements and timeframe adopted by the ~~board~~ department for the temporary standards; and

(b) develop a detailed work plan describing the implementation activities that will be conducted during the first field season of the temporary standards. The work plan must be approved by the director of the department.

(6) By March 1 of each year that the temporary water quality standards are in effect, the department or the petitioner, as applicable, shall submit a detailed work plan describing the implementation activities that will be conducted during that season. The annual work plans must be approved by the director of the department. The department shall maintain copies of the implementation plan, schedule, and annual work plans and any modifications to those plans and schedule.

(7) Upon the ~~board's~~ department's adoption of a temporary water quality standard, the department shall ensure that reasonable conditions and limitations designed to achieve compliance with the implementation plan are established in appropriate discharge permits.

(8) (a) A temporary modification of a water quality standard may not result in adverse impacts to existing beneficial uses or be established for a total period longer than 20 years.

(b) During the period of the temporary modification, the ~~board~~ department may not allow a discharge that will cause overall water quality to become worse than the overall quality of the water body or segment prior to the discharge.

(9) If a state water is designated as having temporary standards, the department shall report ~~to the board~~ at least every 3 years ~~or upon request of the board~~ regarding whether adequate efforts have been made to implement the plans submitted as the basis for the temporary standards.

(10) The ~~board~~ department shall review the temporary standards and implementation plan at least every 3 years at a public hearing for which notice and an opportunity for comment have been provided. During this review, the ~~board~~ department shall consider the progress made in restoring water quality to a level that

achieves the goal of the temporary water quality standards. The ~~board~~department may terminate or modify the temporary standards based on information submitted at the time of review.

(11) The ~~board~~department shall terminate a temporary standard for a parameter if:

(a) values for the modified parameter or parameters improve to conditions that support all designated uses for that classification;

(b) the state water for which the temporary standard is adopted is reclassified as provided for in 75-5-302; or

(c) the plan submitted in support of the temporary water quality standard is not being implemented according to the plan's schedule or modifications to that plan or schedule made by the ~~board~~or department.

(12) The ~~board or the~~ department may modify the implementation plan if there is convincing evidence that the plan needs modification.

(13) If a temporary standard for a parameter in a particular state water is terminated because the plan submitted in support of the temporary water quality standard is not being implemented according to the plan's schedule or modifications to that schedule made by the ~~board or~~ department, a person may request a new temporary standard by submitting both a petition for rulemaking and an implementation plan that meet the requirements of subsection (4). However, the ~~board~~department may not adopt another temporary standard for the parameter in the state water that would cumulatively be in effect for a total period longer than 20 years for the parameter in the state water."

Section 53. Section 75-5-313, MCA, is amended to read:

"75-5-313. Nutrient standards variances -- individual, general, and alternative. (1) The department shall, on a case-by-case basis, approve the use of an individual nutrient standards variance in a discharge permit based upon adequate justification pursuant to subsection (2) that attainment of the base numeric nutrient standards is precluded due to economic impacts, limits of technology, or both.

(2) (a) The department, in consultation with the nutrient work group, shall develop guidelines for individual nutrient standards variances to ensure that the economic impacts from base numeric nutrient standards on public and private systems are equally and adequately addressed. In developing those guidelines, the department and the nutrient work group shall consider economic impacts appropriate for application within

1 Montana, acknowledging that advanced treatment technologies for removing nutrients will result in significant
2 and widespread economic impacts.

3 (b) The department shall consult with the nutrient work group prior to recommending base numeric
4 nutrient standards ~~to the board~~ and shall continue to consult with the nutrient work group in implementing
5 individual nutrient standards variances.

6 (3) The department shall review each application for an individual nutrient standards variance on a
7 case-by-case basis to determine if there are reasonable alternatives, such as trading, permit compliance
8 schedules, or the alternatives provided in subsections (5), (10), and (11), that preclude the need for the
9 individual nutrient standards variance.

10 (4) Individual nutrient standards variances approved by the department become effective and may be
11 incorporated into a permit only after a public hearing and adoption by the department under the rulemaking
12 procedures of Title 2, chapter 4, part 3.

13 (5) (a) Because the treatment of wastewater to base numeric nutrient standards would result in
14 substantial and widespread economic impacts on a statewide basis, a permittee who meets the requirements
15 established in subsection (5)(b) may, subject to subsection (6), apply for a general nutrient standards variance.

16 (b) The department shall approve the use of a general nutrient standards variance for permittees with
17 wastewater treatment facilities that discharge to surface water:

18 (i) in an amount greater than or equal to 1 million gallons per day of effluent if the permittee treats the
19 discharge to, at a minimum, 1 milligram total phosphorus per liter and 10 milligrams total nitrogen per liter,
20 calculated as a monthly average during the period in which the base numeric nutrient standards apply;

21 (ii) in an amount less than 1 million gallons per day of effluent if the permittee treats the discharge to,
22 at a minimum, 2 milligrams total phosphorus per liter and 15 milligrams total nitrogen per liter, calculated as a
23 monthly average during the period in which the base numeric nutrient standards apply; or

24 (iii) from lagoons that were not designed to actively remove nutrients if the permittee maintains the
25 performance of the lagoon at a level equal to the performance of the lagoon on October 1, 2011.

26 (6) (a) The monthly average concentrations for total nitrogen and total phosphorus in subsection
27 (5)(b) are the highest concentrations allowed in each category and remain in effect until May 31, 2016.

28 (b) Categories and concentrations in subsection (5)(b) must be adopted by rule by May 31, 2016.

(7) (a) Immediately after May 31, 2016, and every 3 years thereafter, the department, in consultation with the nutrient work group, shall revisit and update the concentration levels provided in subsection (5)(b).

(b) If more cost-effective and efficient treatment technologies are available, the concentration levels provided in subsection (5)(b) must be updated pursuant to subsection (7)(c) to reflect those changes.

(c) The updates become effective and may be incorporated into a permit only after a public hearing and adoption by the department under the rulemaking procedures of Title 2, chapter 4, part 3.

(8) An individual, general, or alternative nutrient standards variance may be established for a period not to exceed 20 years and must be reviewed by the department every 3 years from the date of adoption to ensure that the justification for its adoption remains valid.

(9) (a) Permittees receiving an individual, general, or alternative nutrient standards variance shall evaluate current facility operations to optimize nutrient reduction with existing infrastructure and shall analyze cost-effective methods of reducing nutrient loading, including but not limited to nutrient trading without substantial investment in new infrastructure.

(b) The department may request that a permittee provide the results of an optimization study and nutrient reduction analysis to the department within 2 years of receiving an individual, general, or alternative nutrient variance.

(10) (a) A permittee may request that the department provide an alternative nutrient standards variance if the permittee demonstrates that achieving nutrient concentrations established for an individual or general nutrient standards variance would result in an insignificant reduction of instream nutrient loading.

(b) A permittee receiving an alternative nutrient standards variance shall comply with the requirements of subsections (8) and (9) and shall demonstrate that the permittee's contribution to nutrient concentrations in the watershed continues to remain insignificant.

(11) The department shall encourage the use of alternative effluent management methods to reduce instream nutrient loading, including reuse, recharge, land application, and trading.

(12) On or before July 1 of each year, the department, in consultation with the nutrient work group, shall report to the water policy committee established in 5-5-231 by providing a summary of the status of the base numeric nutrient standards, the nutrient standards variances, and the implementation of those standards and variances, including estimated economic impacts.

(13) On or before September 1 of each year preceding the convening of a regular session of the legislature, the department, in consultation with the nutrient work group, shall summarize the two most recent reports provided under subsection (12) and submit to the water policy committee established in 5-5-231 this final summary in accordance with 5-11-210."

Section 54. ~~Section 75-5-314, MCA, is amended to read:~~

~~"75-5-314. Confidentiality of base numeric standards and nutrient standards variances. (1) Except as provided in 80-15-108 and subsection (2) of this section, information concerning base numeric nutrient standards or nutrient standards variances that is furnished to the board or department or that is obtained by either of them the department is a matter of public record and open to public use.~~

~~(2) Information unique to the owner or operator of a source of a discharge related to base numeric nutrient standards or nutrient standards variances that would, if disclosed, reveal methods or processes entitled to protection as trade secrets as defined in 30-14-402 must be maintained as confidential if so determined by a court of competent jurisdiction.~~

~~(3) (a) The owner or operator shall file a declaratory judgment action to establish the existence of a trade secret if the owner or operator wishes the information to remain confidential.~~

~~(b) The department must be served in the action and may intervene as a party.~~

~~(c) Information not intended to be public when submitted to the board or department must be submitted in writing and clearly marked as confidential."~~

Section 55. Section 75-5-315, MCA, is amended to read:

"75-5-315. Outstanding resource waters -- statement of purpose. (1) The legislature, understanding the requirements of applicable federal law and the uniqueness of Montana's water resource, recognizes that certain state waters are of such environmental, ecological, or economic value that the state should, upon a showing of necessity, prohibit, to the greatest extent practicable, changes to the existing water quality of those waters. Outstanding resource waters must be afforded the greatest protection feasible under state law, after thorough examination.

(2) The purpose of 75-5-316 and this section is to provide this protection, when necessary, and to

provide guidance to the ~~board~~department in establishing rules to accomplish that level of protection."

Section 56. Section 75-5-316, MCA, is amended to read:

"75-5-316. Outstanding resource water classification -- rules -- criteria -- limitations -- procedure -- definition. (1) As provided under the provisions of 75-5-301 and this section, the ~~board~~department may adopt rules regarding the classification of waters as outstanding resource waters.

(2) The department may not:

(a) grant an authorization to degrade under 75-5-303 in outstanding resource waters; or

(b) allow a new or increased point source discharge that would result in a permanent change in the water quality of an outstanding resource water.

(3) (a) A person may petition the ~~board~~department for rulemaking to classify state waters as outstanding resource waters. The ~~board~~department shall initially review a petition against the criteria identified in subsection (3)(c) to determine whether the petition contains sufficient credible information for the ~~board~~department to accept the petition.

(b) The ~~board~~department may reject a petition without further review if it determines that the petition does not contain the sufficient credible information required by subsection (3)(a). If the ~~board~~department rejects a petition under this subsection (3)(b), it shall specify in writing the reasons for the rejection and the petition's deficiencies.

(c) The ~~board~~department may not adopt a rule classifying state waters as outstanding resource waters until it accepts a petition and makes a written finding containing the provisions enumerated in subsection (3)(d) that, based on a preponderance of the evidence:

(i) the waters identified in the petition constitute an outstanding resource based on the criteria provided in subsection (4);

(ii) the increased protection under the classification is necessary to protect the outstanding resource identified under subsection (3)(a) because of a finding that the outstanding resource is at risk of having one or more of the criteria provided in subsection (4) compromised as a result of pollution; and

(iii) classification as an outstanding resource water is necessary because of a finding that there is no other effective process available that will achieve the necessary protection.

(d) The written finding provided for in subsection (3)(c) must:

(i) identify the criteria provided in subsection (4) that ~~the board believes serve~~ serve as justification for the determination that the water is an outstanding resource;

(ii) specifically identify the criteria that are at risk and explain why those criteria are at risk; and

(iii) specifically explain why other available processes, including the requirements of 75-5-303, will not achieve the necessary protection.

(4) The ~~board~~ department shall consider the following criteria in determining whether certain state waters are outstanding resource waters. However, the ~~board~~ department may determine that compliance with one or more of these criteria is insufficient to warrant classification of the water as an outstanding resource water. The ~~board~~ department shall consider:

(a) whether the waters have been designated as wild and scenic;

(b) the presence of endangered or threatened species in the waters;

(c) the presence of an outstanding recreational fishery in the waters;

(d) whether the waters provide the only source of suitable water for a municipality or industry;

(e) whether the waters provide the only source of suitable water for domestic water supply; and

(f) other factors that indicate outstanding environmental or economic values not specifically mentioned in this subsection (4).

(5) Before accepting a petition, the ~~board~~ department shall:

(a) publish a notice and brief description of the petition in a daily newspaper of general circulation in the area affected and make copies of the proposal available to the public. The cost of publication must be paid by the petitioner.

(b) provide for a 30-day written public comment period regarding whether the petition contains sufficient credible information, as provided in subsection (3)(b), prior to the hearing required in subsection (5)(c);

(c) hold a public hearing regarding the petition and its contents and allow further written and oral testimony at the hearing;

(d) issue a proposed decision, including:

(i) the written finding provided for in subsection (3)(c); and

(ii) the ~~board's~~ department's acceptance or rejection of the petition;

(e) provide for a 30-day public comment period regarding the ~~board's~~ department's proposed decision; and

(f) issue a final decision on acceptance or rejection of the petition, which must include a response to comments ~~that were~~ received by the ~~board,~~ department, and make copies of this decision available to the public.

(6) (a) After acceptance of a petition, the ~~board shall direct the department to~~ shall prepare an environmental impact statement, as provided under Title 75, chapter 1, part 2, and this section.

(b) (i) The petitioner is responsible for all of the costs associated with gathering and compiling data and information, and completing the environmental impact statement.

(ii) Before the department may initiate work on the environmental impact statement, the petitioner shall pay the estimated cost of completing the environmental impact statement, as determined by the department.

(iii) Upon completion of the environmental impact statement, the petitioner shall pay the department any costs that exceeded the estimated cost. If the cost of the environmental impact statement was less than the estimated cost paid by the petitioner, the department shall reimburse the difference to the petitioner.

(iv) The ~~board~~ department may not grant or deny a petition until full payment for the environmental impact statement ~~has been~~ is received by the department.

(7) The ~~board~~ department shall consult with other relevant state agencies and county governments when reviewing outstanding resource water classification petitions.

(8) (a) After completion of an environmental impact statement and consultation with state agencies and local governments, the ~~board~~ department may deny an accepted outstanding resource water classification petition if it finds that:

(i) the requirements of subsection (3)(c) have not been met; or

(ii) based on information available to the ~~board~~ department from the environmental impact statement or otherwise, approving the outstanding resource waters classification petition would cause significant adverse environmental, social, or economic impacts.

(b) If the ~~board~~ department denies the petition, it shall identify its reasons for petition denial.

(c) If the ~~board~~ department grants the petition, the ~~board~~ department shall initiate rulemaking to

1 classify the waters as outstanding resource waters.

2 (9) A rule classifying state waters as outstanding resource waters under this section may be adopted
3 but is not effective until approved by the legislature.

4 (10) The ~~board~~ department may not postpone or deny an application for an authorization to degrade
5 state waters under 75-5-303 based on pending:

6 (a) ~~board~~ department action on an outstanding resource water classification petition regarding those
7 waters; or

8 (b) legislative approval of ~~board~~ department action designating those waters as outstanding resource
9 waters.

10 (11) As used in this section, "petitioner" means an individual, corporation, partnership, firm,
11 association, or other private or public entity that petitions the ~~board~~ department to adopt rules to classify waters
12 as outstanding resource waters."
13

14 **Section 57.** Section 75-5-318, MCA, is amended to read:

15 **"75-5-318. Short-term water quality standards for turbidity.** (1) Upon authorization by the
16 department or the department of fish, wildlife, and parks pursuant to subsection (4), the short-term water quality
17 standards for total suspended sediment and turbidity resulting from stream-related construction activities or
18 stream enhancement projects are the narrative standards for total suspended sediment adopted by the ~~board~~
19 department under 75-5-301. If a short-term narrative standard is authorized under this section, the numeric
20 standard for turbidity adopted by the ~~board~~ department under 75-5-301 does not apply to the affected water
21 body during the term of the narrative standard.

22 (2) The department shall review each application for short-term standards on a case-by-case basis to
23 determine whether there are reasonable alternatives that preclude the need for a narrative standard. If the
24 department determines that the numeric standard for turbidity adopted ~~by the board~~ under 75-5-301 cannot be
25 achieved during the term of the activity and that there are no reasonable alternatives to achieve the numeric
26 standard, the department may authorize the use of a narrative standard for a specified term.

27 (3) Each authorization issued by the department must include conditions that minimize, to the extent
28 practicable, the magnitude of any change in water quality and the length of time during which any change may

1 occur. The authorization must also include site-specific conditions that ensure that the activity is not harmful,
2 detrimental, or injurious to public health and the uses of state waters and that ensure that existing and
3 designated beneficial uses of state water are protected and maintained upon completion of the activity. The
4 department may not authorize short-term narrative standards for activities requiring a discharge permit under
5 rules adopted ~~by the board~~ pursuant to 75-5-401. Authorizations issued under this section may include
6 conditions that require water quality or quantity monitoring and reporting.

7 (4) In the performance of its responsibilities under this section, the department may negotiate
8 operating agreements with other departments of state government that are intended to minimize duplication in
9 review of activities eligible for authorizations under this section. The department of fish, wildlife, and parks may,
10 in accordance with subsections (1), (2), and (3), authorize short-term water quality standards for total
11 suspended sediment and turbidity for any stream construction project that it reviews under Title 75, chapter 7,
12 part 1, or Title 87, chapter 5, part 5."

13
14 **Section 58.** Section 75-5-401, MCA, is amended to read:

15 **"75-5-401. (Temporary) ~~Board rules~~ Rules for permits -- ground water exclusions.** (1) Except as
16 provided in subsection (5), the ~~board~~ department shall adopt rules:

17 (a) governing application for permits to discharge sewage, industrial wastes, or other wastes into
18 state waters, including rules requiring the filing of plans and specifications relating to the construction,
19 modification, or operation of disposal systems;

20 (b) governing the issuance, denial, modification, or revocation of permits. The ~~board~~ department may
21 not require a permit for a water conveyance structure or for a natural spring if the water discharged to state
22 waters does not contain industrial waste, sewage, or other wastes. Discharge to surface water of ground water
23 that is not altered from its ambient quality does not constitute a discharge requiring a permit under this part if:

24 (i) the discharge does not contain industrial waste, sewage, or other wastes;

25 (ii) the water discharged does not cause the receiving waters to exceed applicable standards for any
26 parameters; and

27 (iii) to the extent that the receiving waters in their ambient state exceed standards for any parameters,
28 the discharge does not increase the concentration of the parameters.

(c) governing authorization to discharge under a general permit for storm water associated with construction activity. These rules must allow an owner or operator to notify the department of the intent to be covered under the general permit. This notice of intent must include a signed pollution prevention plan that requires the applicant to implement best management practices in accordance with the general permit. The rules must authorize the owner or operator to discharge under the general permit on receipt of the notice and plan by the department.

(2) The rules must allow the issuance or continuance of a permit only if the department finds that operation consistent with the limitations of the permit will not result in pollution of any state waters, except that the rules may allow the issuance of a temporary permit under which pollution may result if the department ensures that the permit contains a compliance schedule designed to meet all applicable effluent standards and water quality standards in the shortest reasonable period of time.

(3) The rules must provide that the department may revoke a permit if the department finds that the holder of the permit has violated its terms, unless the department also finds that the violation was accidental and unforeseeable and that the holder of the permit corrected the condition resulting in the violation as soon as was reasonably possible.

(4) The ~~board~~department may adopt rules governing reclamation of sites disturbed by construction, modification, or operation of permitted activities for which a bond is voluntarily filed by a permittee pursuant to 75-5-405, including rules for the establishment of criteria and procedures governing release of the bond or other surety and release of portions of a bond or other surety.

(5) Discharges of sewage, industrial wastes, or other wastes into state ground waters from the following activities or operations are not subject to the ground water permit requirements adopted under subsections (1) through (4):

(a) discharges or activities at wells injecting fluids associated with oil and gas exploration and production regulated under the federal underground injection control program;

(b) disposal by solid waste management systems licensed pursuant to 75-10-221;

(c) individuals disposing of their own normal household wastes on their own property;

(d) hazardous waste management facilities permitted pursuant to 75-10-406;

(e) water injection wells, reserve pits, and produced water pits used in oil and gas field operations and

- 1 approved pursuant to Title 82, chapter 11;
- 2 (f) agricultural irrigation facilities;
- 3 (g) storm water disposal or storm water detention facilities;
- 4 (h) subsurface disposal systems for sanitary wastes serving individual residences;
- 5 (i) in situ mining of uranium facilities controlled under Title 82, chapter 4, part 2;
- 6 (j) mining operations subject to operating permits or exploration licenses in compliance with The Strip
- 7 and Underground Mine Reclamation Act, Title 82, chapter 4, part 2, or the metal mine reclamation laws, Title
- 8 82, chapter 4, part 3; or

9 (k) projects reviewed under the provisions of the Montana Major Facility Siting Act, Title 75, chapter

10 20.

11 (6) Notwithstanding the provisions of 75-5-301(4), mixing zones for activities excluded from permit

12 requirements under subsection (5) of this section must be established by the permitting agency for those

13 activities in accordance with 75-5-301(4)(a) through (4)(c).

14 (7) Notwithstanding the exclusions set forth in subsection (5), any excluded source that the

15 department determines may be causing or is likely to cause violations of ground water quality standards may be

16 required to submit monitoring information pursuant to 75-5-602.

17 (8) The ~~board~~department may adopt rules identifying other activities or operations from which a

18 discharge of sewage, industrial wastes, or other wastes into state ground waters is not subject to the ground

19 water permit requirements adopted under subsections (1) through (4).

20 (9) The ~~board~~department may adopt rules authorizing general permits for categories of point source

21 discharges. The rules may authorize discharge upon issuance of an individual authorization by the department

22 or upon receipt of a notice of intent to be covered under the general permit.

23 **75-5-401. (Effective on occurrence of contingency) ~~Board rules~~ Rules for permits -- ground**

24 **water exclusions.** (1) Except as provided in subsection (5), the ~~board~~department shall adopt rules:

25 (a) governing application for permits to discharge sewage, industrial wastes, or other wastes into

26 state waters, including rules requiring the filing of plans and specifications relating to the construction,

27 modification, or operation of disposal systems;

28 (b) governing the issuance, denial, modification, or revocation of permits. The ~~board~~department may

not require a permit for a water conveyance structure or for a natural spring if the water discharged to state waters does not contain industrial waste, sewage, or other wastes. Discharge to surface water of ground water that is not altered from its ambient quality does not constitute a discharge requiring a permit under this part if:

(i) the discharge does not contain industrial waste, sewage, or other wastes;

(ii) the water discharged does not cause the receiving waters to exceed applicable standards for any parameters; and

(iii) to the extent that the receiving waters in their ambient state exceed standards for any parameters, the discharge does not increase the concentration of the parameters.

(c) governing authorization to discharge under a general permit for storm water associated with construction activity. These rules must allow an owner or operator to notify the department of the intent to be covered under the general permit. This notice of intent must include a signed pollution prevention plan that requires the applicant to implement best management practices in accordance with the general permit. The rules must authorize the owner or operator to discharge under the general permit on receipt of the notice and plan by the department.

(2) The rules must allow the issuance or continuance of a permit only if the department finds that operation consistent with the limitations of the permit will not result in pollution of any state waters, except that the rules may allow the issuance of a temporary permit under which pollution may result if the department ensures that the permit contains a compliance schedule designed to meet all applicable effluent standards and water quality standards in the shortest reasonable period of time.

(3) The rules must provide that the department may revoke a permit if the department finds that the holder of the permit has violated its terms, unless the department also finds that the violation was accidental and unforeseeable and that the holder of the permit corrected the condition resulting in the violation as soon as was reasonably possible.

(4) The ~~board~~department may adopt rules governing reclamation of sites disturbed by construction, modification, or operation of permitted activities for which a bond is voluntarily filed by a permittee pursuant to 75-5-405, including rules for the establishment of criteria and procedures governing release of the bond or other surety and release of portions of a bond or other surety.

(5) Discharges of sewage, industrial wastes, or other wastes into state ground waters from the

1 following activities or operations are not subject to the ground water permit requirements adopted under
2 subsections (1) through (4):

3 (a) discharges or activities at wells injecting fluids associated with oil and gas exploration and
4 production regulated under the federal underground injection control program;

5 (b) disposal by solid waste management systems licensed pursuant to 75-10-221;

6 (c) individuals disposing of their own normal household wastes on their own property;

7 (d) hazardous waste management facilities permitted pursuant to 75-10-406;

8 (e) water injection wells, reserve pits, and produced water pits used in oil and gas field operations and
9 approved pursuant to Title 82, chapter 11;

10 (f) agricultural irrigation facilities;

11 (g) storm water disposal or storm water detention facilities;

12 (h) subsurface disposal systems for sanitary wastes serving individual residences;

13 (i) in situ mining of uranium facilities controlled under Title 82, chapter 4, part 2;

14 (j) mining operations subject to operating permits or exploration licenses in compliance with The Strip
15 and Underground Mine Reclamation Act, Title 82, chapter 4, part 2, or the metal mine reclamation laws, Title
16 82, chapter 4, part 3;

17 (k) projects reviewed under the provisions of the Montana Major Facility Siting Act, Title 75, chapter
18 20; or

19 (l) a carbon dioxide injection well for which a permit has been issued pursuant to Title 82, chapter 11,
20 part 1.

21 (6) Notwithstanding the provisions of 75-5-301(4), mixing zones for activities excluded from permit
22 requirements under subsection (5) of this section must be established by the permitting agency for those
23 activities in accordance with 75-5-301(4)(a) through (4)(c).

24 (7) Notwithstanding the exclusions set forth in subsection (5), any excluded source that the
25 department determines may be causing or is likely to cause violations of ground water quality standards may be
26 required to submit monitoring information pursuant to 75-5-602.

27 (8) The ~~board~~department may adopt rules identifying other activities or operations from which a
28 discharge of sewage, industrial wastes, or other wastes into state ground waters is not subject to the ground

1 water permit requirements adopted under subsections (1) through (4).

2 (9) The ~~board~~department may adopt rules authorizing general permits for categories of point source
3 discharges. The rules may authorize discharge upon issuance of an individual authorization by the department
4 or upon receipt of a notice of intent to be covered under the general permit."

5

6 **Section 59.** Section 75-5-402, MCA, is amended to read:

7 **"75-5-402. Duties of department.** The department shall:

8 (1) issue, suspend, revoke, modify, or deny permits to discharge sewage, industrial wastes, or other
9 wastes into state waters, consistently with rules made by the ~~board~~department;

10 (2) examine plans and other information needed to determine whether a permit should be issued or
11 suggest changes in plans as a condition to the issuance of a permit;

12 (3) clearly specify in any permit any limitations imposed as to the volume, strength, and other
13 significant characteristics of the waste to be discharged; and

14 (4) establish as conditions to the issuance of permits for which a performance bond or other surety is
15 filed under 75-5-405 certain reclamation requirements sufficient to prevent pollution of state waters during and
16 after operation of the project or activity for which a permit is issued."

17

18 **Section 60.** ~~Section 75-5-403, MCA, is amended to read:~~

19 ~~"75-5-403. Denial or modification of permit — time for review of permit application. (1) The~~
20 ~~department shall review for completeness all applications for new permits within 60 days of the receipt of the~~
21 ~~initial application and within 30 days of receipt of responses to notices of deficiencies. The initial completeness~~
22 ~~notice must note all major deficiency issues, based on the information submitted. The department and the~~
23 ~~applicant may extend these timeframes, by mutual agreement, by not more than 75 days. An application is~~
24 ~~considered complete unless the applicant is notified of a deficiency within the appropriate review period.~~

25 ~~(2) If the department denies an application for a permit or modifies a permit, the department shall give~~
26 ~~written notice of its action to the applicant or holder and the applicant or holder may request a hearing before~~
27 ~~the board department, in the manner stated in 75-5-611, for the purpose of petitioning the board department to~~
28 ~~reverse or modify the action of the department. The hearing must be held within 30 days after receipt of written~~

~~request. After the hearing, the board department shall affirm, modify, or reverse the action of the department. If the holder does not request a hearing before the board, modification of a permit is effective 30 days after receipt of notice by the holder unless the department specifies a later date. If the holder does request a hearing before the board, an order modifying the permit is not effective until 20 days after receipt of notice of the action of the board department."~~

Section 61. ~~Section 75-5-404, MCA, is amended to read:~~

~~"75-5-404. **Suspension or revocation of permit -- procedure.** If the department suspends or revokes a permit because it has reason to believe that the holder has violated this chapter, the department may specify that the suspension or revocation is effective immediately if the department finds that the violation is likely to continue and will cause pollution, the harmful effects of which will not be remedied immediately on the cessation of the violation. Upon petition by the holder of the permit, the board department shall grant the holder a hearing, to be conducted in the manner specified in 75-5-611, and shall issue an order affirming, modifying, or reversing the action of the department. The order of the board shall be is effective immediately unless the board department directs otherwise."~~

Section 62. Section 75-5-502, MCA, is amended to read:

"75-5-502. Board~~Department~~ authorized to accept loans and grants. The ~~board~~ department may accept loans and grants from the federal government and other sources to carry out the provisions of this chapter."

Section 63. Section 75-5-514, MCA, is amended to read:

"75-5-514. ~~When board~~ department to establish rates and collect charges. (1) In the event a municipality or other entity operating sewage systems fails, neglects, or refuses when required by the department to adopt the system of charges and rates authorized by 75-5-511, the ~~board~~ department may adopt a system of charges and rates as provided for in 75-5-511(1) and collect, administer, and apply such revenues for the purposes of 75-5-512.

(2) In lieu of proceeding in the manner set forth in subsection (1) of this section, the department may

1 institute proceedings at law or in equity to enforce compliance with or restrain violations of 75-5-511 through 75-
2 5-513."

3

4 **Section 64.** Section 75-5-515, MCA, is amended to read:

5 **"75-5-515. Determination of costs payable by users.** In determining the amount of treatment works
6 costs to be paid by recipients of treatment works services, the municipality or other entity operating sewage
7 systems or, if applicable, the ~~board~~ department shall consider the strength, volume, types, and delivery flow
8 rate characteristics of the waste; the nature, location, and type of treatment works; the receiving waters; and
9 ~~such other factors as~~ deemed necessary."

10

11 **Section 65.** Section 75-5-516, MCA, is amended to read:

12 **"75-5-516. Fees authorized for recovery -- process -- rulemaking.** (1) Except as provided in
13 subsections (12) and (13), the ~~board~~ department shall by rule prescribe fees ~~to be assessed by the department~~
14 ~~that are~~ sufficient to cover the ~~board's and~~ department's documented costs, both direct and indirect, of:

15 (a) reviewing and acting upon an application for a permit, permit modification, permit renewal,
16 certificate, license, or other authorization required by rule under 75-5-201 or 75-5-401;

17 (b) reviewing and acting upon a petition for a degradation allowance under 75-5-303;

18 (c) reviewing and acting upon an application for a permit, certificate, license, or other authorization for
19 which an exclusion is provided by rule from the permitting requirements established under 75-5-401;

20 (d) enforcing the terms and conditions of a permit or authorization identified in subsections (1)(a)
21 through (1)(c). If the permit or authorization is not issued, the department shall return this portion of any
22 application fee to the applicant.

23 (e) conducting compliance inspections and monitoring effluent and ambient water quality; and

24 (f) preparing water quality rules or guidance documents.

25 (2) Except as provided in subsection (12), the rules promulgated ~~by the board~~ under this section must
26 include:

27 (a) a fee on all applications for permits or authorizations, as identified in subsections (1)(a) through
28 (1)(c), that recovers to the extent permitted by this subsection (2) the department's cost of reviewing and acting

upon the applications. This fee may not be more than \$5,000 per discharge point for an application addressed under subsection (1), except that an application with multiple discharge points may be assessed a lower fee for those points according to ~~board~~-rule.

(b) an annual fee to be assessed according to the volume and concentration of waste discharged into state waters. The annual fee may not be more than \$3,000 per million gallons discharged per day on an annual average for any activity under permit or authorization, as described in subsection (1), except that:

(i) a permit or authorization with multiple discharge points may be assessed a lower fee for those points according to ~~board~~-rule; and

(ii) a facility that consistently discharges effluent at less than or equal to one-half of its effluent limitations and that is in compliance with other permit requirements, using the previous calendar year's discharge data, is entitled to a 25% reduction in its annual permit fee. Proportionate reductions of up to 25% of the permit fee may be given to facilities that consistently discharge effluent at levels between 50% and 100% of their effluent limitations. However, a new permittee is not eligible for a fee reduction in its first year of operation, and a permittee with a violation of any effluent limit during the previous calendar year is not eligible for a fee reduction for the following year.

(3) To the extent permitted under subsection (2)(b), the annual fee must be sufficient to pay the department's estimated cost of conducting all tasks described under subsection (1) after subtracting:

(a) the fees collected under subsection (2)(a);

(b) state general fund appropriations for functions administered under this chapter; and

(c) federal grants for functions administered under this chapter.

(4) For purposes of subsection (3), the department's estimated cost of conducting the tasks described under subsection (1) is the amount authorized by the legislature for the department's water quality discharge permit programs.

(5) If the applicant or holder fails to pay a fee assessed under this section or rules adopted under this section within 90 days after the date established by rule for fee payment, the department may:

(a) impose an additional assessment consisting of not more than 20% of the fee plus interest on the required fee computed as provided in 15-1-216; or

(b) suspend the permit or exclusion. The department may lift the suspension at any time up to 1 year

1 after the suspension occurs if the holder has paid all outstanding fees, including all penalties, assessments, and
2 interest imposed under subsection (5)(a).

3 (6) Fees collected pursuant to this section must be deposited in an account in the special revenue
4 fund type pursuant to 75-5-517.

5 (7) The department shall give written notice to each person assessed a fee under this section of the
6 amount of fee that is assessed and the basis for the department's calculation of the fee. This notice must be
7 issued at least 30 days prior to the due date for payment of the assessment.

8 (8) A holder of or an applicant for a permit, certificate, or license may appeal the department's fee
9 assessment to the ~~board~~ department board within 20 days after receiving written notice of the ~~department's~~ fee
10 determination under subsection (7). The appeal ~~to the board~~ must include a written statement detailing the
11 reasons that the permitholder or applicant considers the department's fee assessment to be erroneous or
12 excessive.

13 (9) If part of the department's fee assessment is not in dispute in an appeal filed under subsection (8),
14 the undisputed portion of the fee must be paid to the department upon written request of the department.

15 (10) The contested case provisions of the Montana Administrative Procedure Act, provided for in Title
16 2, chapter 4, part 6, apply to a hearing before the ~~board~~ department board under this section.

17 (11) A municipality may raise rates to cover costs associated with the fees prescribed in this section for
18 a public sewer system without the hearing required in 69-7-111.

19 (12) (a) The application fee assessed pursuant to this section for a suction dredge, as described in 82-
20 4-310(2), may not be more than:

- 21 (i) \$25 if it is owned and operated by a resident of this state; or
22 (ii) \$100 if it is owned and operated by a nonresident of this state.

23 (b) The annual fee assessed pursuant to this section for a suction dredge, as described in 82-4-
24 310(2), may not be more than:

- 25 (i) \$25 if it is owned and operated by a resident of this state; or
26 (ii) \$100 if it is owned and operated by a nonresident of this state.

27 (13) A county, an incorporated city or town, or a conservation district formed pursuant to Title 76,
28 chapter 15, is not subject to fees for authorizations pursuant to 75-5-318 or certifications related to section 401

1 of the federal Clean Water Act, 33 U.S.C. 1341."

2

3 **Section 66.** ~~Section 75-5-611, MCA, is amended to read:~~

4 ~~"75-5-611. Violation of chapter -- administrative actions and penalties -- notice and hearing. (1)~~

5 ~~When the department has reason to believe that a violation of this chapter, a rule adopted under this chapter, or~~

6 ~~a condition of a permit or authorization required by a rule adopted under this chapter has occurred, it may have~~

7 ~~a written notice letter served personally or by certified mail on the alleged violator or the violator's agent. The~~

8 ~~notice letter must state:~~

9 ~~(a) the provision of statute, rule, permit, or approval alleged to be violated;~~

10 ~~(b) the facts alleged to constitute the violation;~~

11 ~~(c) the specific nature of corrective action that the department requires;~~

12 ~~(d) as applicable, the amount of the administrative penalty that will be assessed by order under~~

13 ~~subsection (2) if the corrective action is not taken within the time provided under subsection (1)(e); and~~

14 ~~(e) as applicable, the time within which the corrective action is to be taken or the administrative~~
15 ~~penalty will be assessed. For the purposes of this chapter, service by certified mail is complete on the date of~~
16 ~~receipt. Except as provided in subsection (2)(a)(ii), an administrative penalty may not be assessed until the~~
17 ~~provisions of subsection (1) have been complied with.~~

18 ~~(2) (a) The department may issue an administrative notice and order in lieu of the notice letter~~
19 ~~provided under subsection (1) if the department's action:~~

20 ~~(i) does not involve assessment of an administrative penalty; or~~

21 ~~(ii) seeks an administrative penalty only for an activity that it believes and alleges has violated or is~~
22 ~~violating 75-5-605.~~

23 ~~(b) A notice and order issued under this section must meet all of the requirements specified in~~
24 ~~subsection (1).~~

25 ~~(3) In a notice and order given under subsection (1), the department may require the alleged violator~~
26 ~~to appear before the board for a public hearing and to answer the charges. The hearing must be held no sooner~~
27 ~~than 15 days after service of the notice and order, except that the board department may set an earlier date for~~
28 ~~hearing if it is requested to do so by the alleged violator. The board department may set a later date for hearing~~

1 ~~at the request of the alleged violator if the alleged violator shows good cause for delay.~~

2 ~~(4) If the department does not require an alleged violator to appear before the board for a public~~
3 ~~hearing, the alleged violator may request the board department to conduct the hearing. The request must be in~~
4 ~~writing and must be filed with the department no later than 30 days after service of a notice and order under~~
5 ~~subsection (2). If a request is filed, a hearing must be held within a reasonable time. If a hearing is not~~
6 ~~requested within 30 days after service upon the alleged violator, the opportunity for a contested case appeal to~~
7 ~~the board department under Title 2, chapter 4, part 6, is waived.~~

8 ~~(5) If a contested case hearing is held under this section, it must be public and must be held in the~~
9 ~~county in which the violation is alleged to have occurred or in Lewis and Clark County.~~

10 ~~(6) (a) After a hearing, the board department shall make findings and conclusions that explain its~~
11 ~~decision.~~

12 ~~(b) If the board department determines that a violation has occurred, it shall also issue an appropriate~~
13 ~~order for the prevention, abatement, or control of pollution, the assessment of administrative penalties, or both.~~

14 ~~(c) If the order requires abatement or control of pollution, the board department shall state the date or~~
15 ~~dates by which a violation must cease and may prescribe timetables for necessary action in preventing,~~
16 ~~abating, or controlling the pollution.~~

17 ~~(d) If the order requires payment of an administrative penalty, the board department shall explain how~~
18 ~~it determined the amount of the administrative penalty.~~

19 ~~(e) If the board department determines that a violation has not occurred, it shall declare the~~
20 ~~department's notice void.~~

21 ~~(7) The alleged violator may petition the board department for a rehearing on the basis of new~~
22 ~~evidence, which petition the board department may grant for good cause shown.~~

23 ~~(8) Instead of issuing an order, the board may direct the department to may initiate appropriate action~~
24 ~~for recovery of a penalty under 75-5-631, 75-5-632, 75-5-633, or 75-5-635.~~

25 ~~(9) (a) Except as provided in subsection (9)(d), an action initiated under this section may include an~~
26 ~~administrative penalty of not more than \$10,000 for each day of each violation; however, the maximum penalty~~
27 ~~may not exceed \$100,000 for any related series of violations.~~

28 ~~(b) Administrative penalties collected under this section must be deposited in the general fund.~~

~~(c) In determining the amount of penalty to be assessed to a person, the department and board shall consider the penalty factors in 75-1-1001, rules promulgated under 75-5-201, and subsection (9)(d).~~

~~(d) A person who commits a violation that adversely affects the department's administration of this chapter, a rule adopted pursuant to this chapter, or a condition of a permit or authorization issued under this chapter but does not harm or have the potential to harm human health, the environment, or the department's ability to protect human health or the environment may not be assessed a penalty of more than \$500 for each day of the violation, not to exceed \$5,000 for all days of the same violation.~~

~~(e) The contested case provisions of the Montana Administrative Procedure Act, provided for in Title 2, chapter 4, part 6, apply to a hearing conducted under this section."~~

Section 67. ~~Section 75-5-614, MCA, is amended to read:~~

~~"75-5-614. Injunctions authorized. (1) Except as provided in 81-9-240, the department is authorized to commence a civil action seeking appropriate relief, including a permanent or temporary injunction, for a violation that would be subject to a compliance order under 75-5-613. An action under this subsection may be commenced in the district court of the county where a violation occurs or is threatened, and the court has jurisdiction to restrain the violation and to require compliance.~~

~~(2) Except as provided in 81-9-240, the department may bring an action for an injunction against the continuation of an alleged violation of the terms or conditions of a permit issued by the department or any rule or effluent standard promulgated under this chapter or against a person who fails to comply with an emergency order issued by the department under 75-5-621 or a final order of the board department. The court to which the department applies for an injunction may issue a temporary injunction if it finds that there is reasonable cause to believe that the allegations of the department are true, and it may issue a temporary restraining order pending action on the temporary injunction."~~

Section 68. ~~Section 75-5-621, MCA, is amended to read:~~

~~"75-5-621. Emergencies. (1) Notwithstanding other provisions of this chapter, if the department finds that a person is committing or is about to commit an act in violation of this chapter or an order or rule issued under this chapter that, if it occurs or continues, will cause substantial pollution the harmful effects of which will~~

~~not be remedied immediately after the commission or cessation of the act, the department may order the person to stop, avoid, or moderate the act so that the substantial injury will not occur. The order is effective immediately upon receipt by the person to whom it is directed, unless the department provides otherwise.~~

~~(2) Notice of the order must conform to the requirements of 75-5-611(1) so far as practicable. The notice must indicate that the order is an emergency order.~~

~~(3) Upon issuing an order, the department shall fix a place and time for a hearing before the board, not later than 5 days after issuing the order unless the person to whom the order is directed requests a later time. The department may deny a request for a later time if it finds that the person to whom the order is directed is not complying with the order. The hearing must be conducted in the manner specified in 75-5-611. As soon as practicable after the hearing, the board department shall affirm, modify, or set aside the order of the department. The order of the board must be accompanied by the information required in 75-5-611(6). An action for review of the order of the board may be initiated in the manner specified in 75-5-641. Except as provided in 81-9-240, the initiation of an action or taking of an appeal may not stay the effectiveness of the order unless the court finds that the board department did not have reasonable cause to issue an order under this section."~~

Section 69. ~~Section 75-5-641, MCA, is amended to read:~~

~~"75-5-641. Appeals from board department orders — review by district court. (1) An appeal of an order of the board department must be in the district court of the county in which the alleged source of pollution is located.~~

~~(2) A person interested in the order may intervene, in the manner provided by the rules of civil procedure, if the person shows good cause. An intervenor is a party for the purposes of this chapter.~~

~~(3) The attorney general shall represent the board department if requested, or the department may appoint special counsel for the proceedings, subject to the approval of the attorney general.~~

~~(4) Except as provided in 81-9-240, the initiation of an action for review or the taking of an appeal does not stay the effectiveness of an order of the board unless the court finds that there is probable cause to believe:~~

~~(a) that refusal to grant a stay will cause serious harm to the affected party; and~~

~~(b) that a violation found by the board department will not continue or, if it does continue, the harmful~~

~~effects on state waters will be remedied immediately on the cessation of the violation.~~

~~(5) If a court does not stay the effectiveness of an order of the board, it may enforce compliance with that order by issuing a temporary restraining order or an injunction at the request of the board department.~~

Section 70. ~~Section 75-5-702, MCA, is amended to read:~~

~~**"75-5-702. Monitoring -- water quality assessment listing -- costs payable by department -- statewide advisory group.** (1) The department shall monitor state waters to assess the quality of those waters and to identify surface water bodies or segments of surface water bodies that are threatened or impaired. The department shall use the monitoring results to revise the list of water bodies that are identified as threatened or impaired and to establish a priority ranking for TMDL development for those waters in accordance with subsections (4) and (7).~~

~~(2) In revising the list prepared pursuant to this section, the department shall use all currently available data, including information or data obtained from federal, state, and local agencies, private entities, or individuals with an interest in water quality protection. Except as provided in subsection (6), the department may modify the list only if there is sufficient credible data to support the modification. Prior to publishing a final list, the department shall provide public notice and allow 60 days for public comment on the draft list. The department shall make available for public review, upon request, documentation used in the determination to list or delist a particular water body, including, at a minimum, a description of the information, data, and methodology used. The department may charge a reasonable fee for the documentation, commensurate with the cost of providing the documentation to the requestor.~~

~~(3) A person may request that the department add or remove a water body or reprioritize a water body on a draft or published list by providing the data or information necessary to support the request. The department shall review the data within 60 days from its submittal. If the department determines that there is sufficient credible data to grant the request, the department shall provide public notice of its intended action and allow 60 days for public comment prior to taking action on the request. A person aggrieved by the department's decision to grant or deny the request may appeal the department's decision to the board department.~~

~~(4) The department shall, in consultation with local conservation districts and watershed advisory groups pursuant to 75-5-704, review and revise the list and priority rankings of water bodies identified as~~

~~threatened or impaired. The department shall review and revise the list at intervals not to exceed 5 years. The department shall make available for public review the data and information used in making any changes in its list of threatened or impaired water bodies that is developed and maintained pursuant to this section.~~

~~(5) By October 1, 1999, and in consultation with the statewide TMDL advisory group established pursuant to subsection (10), the department shall develop and maintain a data management system that can be used to assess the validity and reliability of the data used in the listing and priority ranking process. The department shall make available to the public, upon request, data from its data management system. The department may charge a reasonable fee for the data, commensurate with its cost of providing the data to the requestor.~~

~~(6) By October 1, 1999, and in consultation with the statewide TMDL advisory group, the department shall use the data management system developed and maintained pursuant to subsection (5) to revise the list and to remove any water body that lacks sufficient credible data to support its listing. If the department removes a water body because there is a lack of sufficient credible data to support its listing, the department shall monitor and assess that water body during the next field season or as soon as possible thereafter to determine whether it is a threatened water body or an impaired water body.~~

~~(7) Except as provided in subsection (9), in prioritizing water bodies for TMDL development, the department shall, in consultation with the statewide TMDL advisory group, take into consideration the following:~~

- ~~(a) the beneficial uses established for a water body;~~
- ~~(b) the extent that natural factors over which humans have no control are contributing to any impairment;~~
- ~~(c) the impacts to human health and aquatic life;~~
- ~~(d) the degree of public interest and support;~~
- ~~(e) the character of the pollutant and the severity and magnitude of water quality standard noncompliance;~~
- ~~(f) whether the water body is an important high-quality resource in an early stage of degradation;~~
- ~~(g) the size of the water body not achieving standards;~~
- ~~(h) immediate programmatic needs, such as waste load allocations for new permits or permit renewals and load allocations for new nonpoint sources;~~

~~(i) court orders and decisions relating to water quality;~~

~~(j) state policies and priorities, including the protection and restoration of native fish when appropriate;~~

~~(k) the availability of technology and resources to correct the problems;~~

~~(l) whether actions or voluntary programs that are likely to correct the impairment of a particular water body are currently in place; and~~

~~(m) the recreational, economic, and aesthetic importance of a particular water body.~~

~~(8) Except as provided in subsection (9), the department shall, in consultation with the statewide TMDL advisory group, develop a method of rating water bodies according to the criteria and considerations described in subsection (7) in order to rank the listed water bodies as high priority, moderate priority, or low priority for TMDL development. The department may not rank a water body as a high priority under this section without first validating the data necessary to support the ranking.~~

~~(9) (a) When the department receives an application for a new individual permit to discharge into a surface water body or a segment of a surface water body pursuant to 75-5-401, the surface water body or segment of a surface water body has been listed pursuant to subsection (2) of this section, the discharge would contain a pollutant for which the water body or segment is threatened or impaired, and a TMDL has not been developed for that water body or segment, the department shall:~~

~~(i) within 30 days of the department's receipt of the application, initiate the development of a TMDL on the water body or segment; and~~

~~(ii) except as provided in subsection (9)(b), within 180 days of the department's receipt of the application, complete development of the TMDL pursuant to 75-5-703.~~

~~(b) If the department is not able to complete development of the TMDL in accordance with subsection (9)(a)(ii), the department shall, within 30 days of the department's receipt of the application, specify in writing to the applicant why the department is not able to complete development of a TMDL in accordance with subsection (9)(a)(ii). The department and the applicant shall make reasonable efforts to mutually agree in writing to a timeframe in which the department shall complete development of the TMDL. If the department specifies a lack of resources as a reason why the department cannot complete development of the TMDL in accordance with subsection (9)(a)(ii), the department shall clearly explain in its written specification what resources are not available, why those resources are not available, and when those resources will be available.~~

~~(c) If the department and the applicant cannot mutually agree to a timeframe in accordance with subsection (9)(b), the department shall, within 60 days of the department's receipt of the application, specify in writing to the applicant the timeframe in which the TMDL will be completed by the department and the reasons why that timeframe is appropriate. If the department specifies a lack of resources as a reason why the department's timeframe is appropriate, the department may request the applicant provide funding for the development of the TMDL in order to accelerate the completion of the TMDL.~~

~~(d) The applicant may, within 15 days of the department's written specification provided in accordance with subsection (9)(c), request in writing a hearing before the board department for the purpose of petitioning the board to reverse or modify the department's decision. The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing before the board under this subsection. If the parties to the contested case waive a formal proceeding pursuant to 2-4-603, the informal proceeding must be conducted within 30 days after the board's receipt of the written request. After the hearing and in a reasonable time, the board department shall affirm, modify, or reverse the its action of the department, and the board shall make findings and conclusions that explain its decision. Pending the board's decision, the department shall develop the TMDL in accordance with the timeframe specified in subsection (9)(a)(ii).~~

~~(e) The department may not declare an application incomplete or deficient because a TMDL has not been prepared.~~

~~(f) If on April 27, 2015, an application for a new individual permit to discharge into a surface water body or a segment of a surface water body pursuant to 75-5-401 is pending, the surface water body or segment of a surface water body has been listed pursuant to subsection (2) of this section, the discharge would contain a pollutant for which the water body or segment is threatened or impaired, and a TMDL has not been developed for the water body or segment, the department shall, except as provided in subsection (9)(g), complete a TMDL for the water body or segment within 180 days of April 27, 2015.~~

~~(g) If the department is not able to complete development of the TMDL within 180 days of April 27, 2015, pursuant to subsection (9)(f), then the timeframes established in accordance with subsections (9)(b), (9)(c), and (9)(d) apply to the application, but the timeframes are measured from April 27, 2015, not from the date the department receives an application.~~

~~(10) (a) The department shall establish a statewide TMDL advisory group to serve in the consultation~~

~~capacity set forth in 75-5-703, 75-5-704, and this section. Fourteen members, and any replacement members that may be necessary, must be appointed by the director, based upon one nomination from each of the following interests:~~

~~(i) livestock-oriented agriculture;~~

~~(ii) farming-oriented agriculture;~~

~~(iii) conservation or environmental interests;~~

~~(iv) water-based recreationists;~~

~~(v) the forestry industry;~~

~~(vi) municipalities;~~

~~(vii) point source dischargers;~~

~~(viii) mining;~~

~~(ix) federal land management agencies;~~

~~(x) state trust land management agencies;~~

~~(xi) supervisors of soil and water conservation districts for counties east of the continental divide;~~

~~(xii) supervisors of soil and water conservation districts for counties west of the continental divide;~~

~~(xiii) the hydroelectric industry; and~~

~~(xiv) fishing-related businesses.~~

~~(b) If the director receives more than one nomination from a particular interest, the director shall notify the respective nominators and request that they agree on one nominee.~~

~~(11) The department shall provide public notice of meetings of the statewide TMDL advisory group and shall solicit, document, and consider public comments provided during the deliberations of the advisory group."~~

Section 71. Section 75-5-802, MCA, is amended to read:

"75-5-802. Permitting -- concentrated animal feeding operation. (1) For the purpose of permitting concentrated animal feeding operations, the ~~board~~department shall adopt, by reference, the federal regulations and definitions contained in 40 CFR, parts 122.23 and 412.

(2) Subject to the provisions of subsection (3), concentrated animal feeding operations that meet the requirements of 40 CFR, part 412, must be authorized by the department under a general permit.

(3) If, upon review of an application for a general permit authorization for a concentrated animal feeding operation production area, the department discovers site-specific information that indicates that a general permit authorization is not sufficiently protective of water quality, the department shall require an individual permit."

Section 72. ~~Section 75-6-102, MCA, is amended to read:~~

~~"75-6-102. Definitions. As used in this part, unless the context clearly indicates otherwise, the following definitions apply:~~

~~(1) "Board" means the board of environmental review provided for in 2-15-3502.~~

~~(2)(1) "Certified source water protection area" means an area certified by the department that identifies the surface and subsurface area surrounding a source of water for a public water supply system through which contaminants may move toward and reach the source of supply.~~

~~(3)(2) "Community water system" means a public water supply system that serves at least 15 service connections used by year-round residents or that regularly serves at least 25 year-round residents.~~

~~(4)(3) "Contamination" means impairment of the quality of state waters by sewage, industrial waste, or other waste creating a hazard to human health.~~

~~(5)(4) "Cross-connection" means a connection between a public water supply system and another water supply system, either public or private, or a wastewater or sewerline or other potential source of contamination so that a flow of water into or contamination of the public water supply system from the other source of water or contamination is possible.~~

~~(6)(5) "Department" means the department of environmental quality provided for in 2-15-3501.~~

~~(7)(6) "Drainage" means rainfall, surface, and subsoil water.~~

~~(8)(7) "Industrial waste" means any waste substance from the processes of business or industry or from the development of a natural resource, together with any sewage that may be present.~~

~~(9)(8) "Maximum contaminant level" means the maximum permissible level of a contaminant in water that is delivered to a user of a public water supply system.~~

~~(10)(9) "Other waste" means garbage, municipal refuse, decayed wood, sawdust, shavings, bark, lime, sand, ashes, offal, night soil, oil, grease, tar, heat, chemicals, dead animals, sediment, wrecked or discarded~~

~~equipment, radioactive materials, solid waste, and all other substances that may pollute state waters.~~

~~(11)(10) "Person" means an individual, firm, partnership, company, association, corporation, city, town, local government entity, federal agency, or any other governmental or private entity, whether organized for profit or not.~~

~~(12)(11) (a) "Pollution" means contamination or other alteration of the physical, chemical, or biological properties of state waters that exceeds that which is permitted by Montana water quality standards, including but not limited to standards relating to change in temperature, taste, color, turbidity, or odor or the discharge or introduction of a liquid, gaseous, solid, radioactive, or other substance into state water that will or is likely to create a nuisance or render the waters harmful, detrimental, or injurious to public health, recreation, safety, or welfare, to livestock, or to wild animals, birds, fish, or other wildlife.~~

~~(b) A discharge that is authorized under the pollution discharge permit rules of the board department is not pollution under this chapter.~~

~~(13) 12 "Public sewage system" means a system of collection, transportation, treatment, or disposal of sewage that serves 15 or more families or 25 or more persons daily for any 60 or more days in a calendar year.~~

~~(14)(13) "Public water supply system" means a system for the provision of water for human consumption from a community well, water hauler for cisterns, water bottling plant, water dispenser, or other water supply that has at least 15 service connections or that regularly serves at least 25 persons daily for any 60 or more days in a calendar year.~~

~~(15)(14) "Reclaimed wastewater" means wastewater that is treated by a public sewage system for reuse for private, public, or commercial purposes.~~

~~(16)(15) "Safe Drinking Water Act" means 42 U.S.C. 300f and regulations set forth in 40 CFR, parts 141 and 142.~~

~~(17)(16) "Sewage" means water-carried waste products from residences, public buildings, institutions, or other buildings, including discharge from human beings, together with ground water infiltration and surface water present.~~

~~(18)(17) "Source water protection program" means a program administered by the department to certify source water protection delineation and assessment reports and source water protection plans and to review source water protection ordinances.~~

~~(19)(18) "State waters" means a body of water, irrigation system, or drainage system, either surface or underground.~~

~~(20)(19) "Transient noncommunity water system" means a public water supply system that is not a community water system and that does not regularly serve at least 25 of the same persons for at least 6 months a year."~~

Section 73. Section 75-6-104, MCA, is amended to read:

"75-6-104. Duties of department. (1) The department has general supervision over all state waters that are directly or indirectly being used by a person for a public water supply system, for domestic purposes, or as a source of ice.

(2) The department shall, subject to the provisions of 75-6-116 and as provided in 75-6-131, adopt rules and standards concerning:

(a) maximum contaminant levels for waters that are or will be used for a public water supply system;

(b) fees, as described in 75-6-108, for services rendered by the department;

(c) monitoring, recordkeeping, and reporting by persons who own or operate public water supply systems;

(d) requiring public notice to all users of a public water supply system when a person has been granted a variance or exemption or is in violation of this part or a rule or order issued pursuant to this part;

(e) the siting, construction, operation, and modification of a public water supply system or public sewage system, including requirements to remedy:

(i) defects in the design, operation, or maintenance of a public water supply system or public sewage system in order to prevent or correct introduction of contamination into water used for a public water supply system, for domestic purposes, or as a source of ice;

(ii) fecal contamination in water used by a public water supply system; or

(iii) failure or malfunction of the sources, treatment, storage, or distribution portion of a public water supply system in order to prevent or correct introduction of contamination into water used for a public water supply system, for domestic purposes, or as a source of ice;

(f) the review of the technical, managerial, and financial capacity of a proposed public water supply

system or public sewage system, as necessary to ensure the capability of the system to meet the requirements of this part;

(g) the collection and analysis of samples of water used for drinking or domestic purposes;

(h) the issuance of variances and exemptions as authorized by the federal Safe Drinking Water Act and this part;

(i) administrative enforcement procedures and administrative penalties authorized under this part;

(j) standards and requirements for the review and approval of programs that may be voluntarily submitted by suppliers of public water supply systems to prevent water supply contamination from a cross-connection, including provisions to exempt cross-connections from the standards and requirements if all connected systems are department-approved public water supply systems;

(k) (i) allowable uses of reclaimed wastewater and classification of those uses;

(ii) treatment, monitoring, recordkeeping, and reporting standards and requirements tailored to each classification that must be met by the public sewage system to protect the uses of the reclaimed wastewater and any receiving water;

(iii) prohibition of reclaimed wastewater uses that are not allowable under subsection (2)(k)(i) or for which the reclaimed wastewater has not been treated in compliance with rules adopted under subsection (2)(k)(ii); and

(iv) a requirement that an applicant who proposes to use reclaimed wastewater pursuant to this subsection (2)(k) has obtained any necessary authorizations required under Title 85 from the department of natural resources and conservation; and

(l) any other requirement necessary for the protection of public health as described in this part.

(3) Department rules must provide for the following:

(a) except as provided in 75-6-131, a water supply or water distribution facility reviewed and approved by the department is not subject to changes in department design and construction criteria for a period of 36 months after written approval of the facility is issued by the department;

(b) except for facilities subject to permit requirements under Title 75, chapter 5, part 4, and except as provided under rules adopted pursuant to 75-6-131, a system of water supply, drainage, wastewater, or sewage reviewed and approved under this section is not subject to changes in department design or construction

1 criteria for a period of 36 months after written approval is issued by the department;

2 (c) plans and specifications for a portion of a facility or system subject to a 36-month limit on criteria
3 changes pursuant to subsections (3)(a) and (3)(b) but not constructed within the 36-month timeframe must be
4 resubmitted for department review and approval before construction of that portion of the facility;

5 (d) the provisions of this subsection (3) may not limit an applicant's ability to alter a proposed project
6 that is otherwise in conformance with applicable laws, rules, standards, and criteria.

7 (4) The department or the board may issue orders necessary to fully implement the provisions of this
8 part.

9 (5) The department shall:

10 (1)(a) upon its own initiative or complaint to the department, to the mayor or health officer of a
11 municipality, or to the managing board or officer of a public institution, make an investigation of alleged pollution
12 of a water supply system and, if required, prohibit the continuance of the pollution by ordering removal of the
13 cause of pollution;

14 (2)(b) have waters examined to determine their quality and the possibility that they may endanger
15 public health;

16 (3)(c) consult and advise authorities of cities and towns and persons having or about to construct
17 systems for water supply, drainage, wastewater, and sewage as to the most appropriate source of water supply
18 and the best method of ensuring its quality;

19 (4)(d) advise persons as to the best method of treating and disposing of their drainage, sewage, or
20 wastewater with reference to the existing and future needs of other persons and to prevent pollution;

21 (5)(e) consult with persons engaged in or intending to engage in manufacturing or other business
22 whose drainage or sewage may tend to pollute waters as to the best method of preventing pollution;

23 (6)(f) collect fees, as described in 75-6-108, for services and deposit the fees collected in the public
24 drinking water special revenue fund established in 75-6-115;

25 (7)(g) establish and maintain experiment stations and conduct experiments to study the best methods
26 of treating water, drainage, wastewater, and sewage to prevent pollution, including investigation of methods
27 used in other states;

28 (8)(h) enter on premises at reasonable times to determine sources of pollution or danger to water

1 supply systems and whether rules and standards of the ~~board~~ department are being obeyed;
2 ~~(9)(i)~~ enforce and administer the provisions of this part;
3 ~~(10)(j)~~ establish a plan for the provision of safe drinking water under emergency circumstances;
4 ~~(11)(k)~~ maintain an inventory of public water supply systems and establish a program for conducting
5 sanitary surveys; and
6 ~~(12)(l)~~ enter into agreements with local boards of health whenever appropriate for the performance of
7 surveys and inspections under the provisions of this part."
8

9 **Section 74.** Section 75-6-105, MCA, is amended to read:

10 **"75-6-105. Records required for wells drilled to supply water to public.** Every person drilling a
11 water well to furnish water for public consumption shall keep a complete record of the depth, thickness, and
12 character of different strata and other information prescribed by the ~~board~~ department. Data ~~shall~~ must be
13 furnished to the department on forms prescribed by it. These data are available to the public at all reasonable
14 times."
15

16 **Section 75.** Section 75-6-106, MCA, is amended to read:

17 **"75-6-106. Laboratory license required.** A laboratory analysis of water taken from a public water
18 supply system or any report of an analysis required by this part or a rule adopted under this part may not be
19 accepted by the department ~~or board~~ unless the analysis or report is made by the department of public health
20 and human services' laboratory or by a laboratory licensed by the department of public health and human
21 services for water analysis purposes."
22

23 **Section 76.** Section 75-6-107, MCA, is amended to read:

24 **"75-6-107. Variances and exemptions.** (1) Except as provided in subsection (3), the department
25 may grant a variance or exemption from the requirements of this part or the rules adopted under this part
26 pursuant to the terms and conditions of the variance and exemption rules adopted by the ~~board~~ department.
27 (2) Except as provided in subsection (3), a variance or exemption granted pursuant to this section
28 must be accompanied by a compliance plan specifying a time schedule for compliance.

(3) The department may grant for a period of up to 5 years a variance or exemption for a public water system to use bottled water to achieve compliance with a maximum contaminant level for nitrate. The variance or exemption must include the requirement that the owner of the public water system warn the public that the tap water is not potable and could pose a health risk if consumed by:

(a) posting signs at locations required by the variance or exemption for the period granted by the variance or exemption; and

(b) delivering annual notices as required by the variance or exemption to users of the public water system.

(4) A person aggrieved by a decision of the department to grant, deny, revoke, or modify a variance or exemption may appeal the department's decision to the ~~board~~ department board as provided in the Montana Administrative Procedure Act."

Section 77. Section 75-6-108, MCA, is amended to read:

"75-6-108. ~~Board~~Department to prescribe fees -- opportunity for appeal. (1) The ~~board~~ department shall by rule prescribe fees to be assessed annually by the department on owners of public water supply systems to recover department costs in providing services under this part. The annual fee for a public water supply system is no more than \$2.25 for each service connection to the public water supply system for the biennium beginning July 1, 1991, and ending June 30, 1993, and thereafter is no more than \$2 for each service connection to the public water supply system, although the minimum fee for any system is \$100, except that the fee for a transient noncommunity water system is \$50.

(2) Public water supply systems in a municipality may raise the rates to recover costs associated with the fees prescribed in this section without the public hearing required in 69-7-111.

(3) The ~~board~~ department shall by rule prescribe fees to be assessed by the department on persons who submit plans and specifications for construction, alteration, or extension of a public water supply system or public sewage system. The fees must be commensurate with the cost to the department of reviewing the plans and specifications.

(4) Fees collected pursuant to this section must be deposited in the public drinking water special revenue fund established in 75-6-115.

(5) (a) The department shall notify the owner of a public water supply system in writing of the amount of the fee to be assessed and the basis for the assessment. The owner may appeal the fee assessment in writing ~~to the board~~ ~~to the board~~ to the board within 20 days after receipt of the written notice.

(b) An appeal must be based on the allegation that the fee is erroneous or excessive. An appeal may not be based only on the fee schedule adopted by the ~~board~~ department.

(c) If any part of the fee assessment is not appealed, it must be paid to the department upon receipt of the notice provided for in subsection (5)(a)."

Section 78. ~~Section 75-6-109, MCA, is amended to read:~~

~~"75-6-109. Administrative enforcement. (1) If the department believes that a violation of this part, a rule adopted under this part, or a condition of approval issued under this part has occurred, it may serve written notice of the violation, by certified mail, on the alleged violator or the violator's agent. The notice must specify the provision of this part, the rule, or the condition of approval alleged to have been violated and the facts alleged to constitute a violation. The notice must include an order to take necessary corrective action within a reasonable period of time. The time period must be stated in the order. Service by mail is complete on the date of filing.~~

~~(2) If the alleged violator does not request a hearing before the board within 30 days of the date of service, the order becomes final. Failure to comply with a final order may subject the violator to an action commenced pursuant to 75-6-104, 75-6-113, or 75-6-114.~~

~~(3) If the alleged violator requests a hearing before the board within 30 days of the date of service, the board department shall schedule a hearing. After the hearing is held, the board department may:~~

~~(a) affirm or modify the department's order issued under subsection (1) if the board department finds that a violation has occurred; or~~

~~(b) rescind the department's order if the board department finds that a violation has not occurred.~~

~~(4) An order issued by the department or the board may set a date by which the violation must cease and set a time limit for action to correct a violation.~~

~~(5) As an alternative to issuing an order pursuant to subsection (1), the department may:~~

~~(a) require the alleged violator to appear before the board for a hearing, at a time and place specified~~

~~in the notice, to answer the charges complained of; or~~

~~(b) initiate an action under 75-6-111(2), 75-6-113, or 75-6-114.~~

~~(6) (a) An action initiated under this part may include an administrative penalty not to exceed:~~

~~(i) \$1,000 for each day of a violation pertaining to a public water system, other than a water hauler or a water bottling plant, that serves a population of more than 10,000; and~~

~~(ii) \$500 for each day of violation for other violations.~~

~~(b) Administrative penalties collected under this section must be deposited in the state general fund.~~

~~(7) In determining the amount of penalty to be assessed to a person, the department or the board, as appropriate, shall consider the penalty factors in 75-1-1001 and the rules promulgated under 75-6-103(2)(i), 75-6-104(2)(i).~~

~~(8) The contested case provisions of the Montana Administrative Procedure Act, provided for in Title 2, chapter 4, part 6, apply to a hearing under 75-6-108 or this section."~~

Section 79. Section 75-6-112, MCA, is amended to read:

"75-6-112. Prohibited acts. A person may not:

(1) commence or continue construction, alteration, extension, or operation of a system of water supply or water distribution that is intended to be used as a public water supply system or a system that is intended to be used as a public sewage system before the person submits to the department necessary maps, plans, and specifications for its review and the department approves those maps, plans, and specifications;

(2) operate or maintain a public water supply system that exceeds a maximum contaminant level established by the ~~board~~ department unless the person has been granted or has an application pending for a variance or exemption pursuant to this part;

(3) violate any provision of this part or a rule adopted under this part; or

(4) violate any condition or requirement of an approval issued pursuant to this part."

Section 80. ~~Section 75-6-113, MCA, is amended to read:~~

~~"75-6-113. Penalty. Any person violating this part or any rule or order of the board or department issued under the provisions of this part shall be guilty of a misdemeanor and upon conviction shall be fined not~~

1 ~~less than \$50 or more than \$500. Each day upon which a violation of this part occurs shall be considered a~~
2 ~~separate offense."~~

3
4 **Section 81.** Section 75-6-116, MCA, is amended to read:

5 **"75-6-116. State regulations no more stringent than federal regulations or guidelines.** (1) After
6 April 14, 1995, except as provided in subsections (2) through (5) or unless required by state law, the ~~board~~
7 department may not adopt a rule to implement this chapter that is more stringent than the comparable federal
8 regulations or guidelines that address the same circumstances. The ~~board~~ department may incorporate by
9 reference comparable federal regulations or guidelines.

10 (2) The ~~board~~ department may adopt a rule to implement this chapter that is more stringent than
11 comparable federal regulations or guidelines only if the ~~board~~ department makes a written finding after a public
12 hearing and public comment and based on evidence in the record that:

13 (a) the proposed state standard or requirement protects public health or the environment of the state;
14 and

15 (b) the state standard or requirement to be imposed can mitigate harm to the public health or
16 environment and is achievable under current technology.

17 (3) The written finding must reference information and peer-reviewed scientific studies contained in
18 the record that forms the basis for the ~~board's~~ department's conclusion. The written finding must also include
19 information from the hearing record regarding the costs to the regulated community that are directly attributable
20 to the proposed state standard or requirement.

21 (4) (a) A person affected by a rule of the board of environmental review adopted after January 1,
22 1990, and before April 14, 1995, that that person believes to be more stringent than comparable federal
23 regulations or guidelines may petition the ~~board~~ department to review the rule. If the ~~board~~ department
24 determines that the rule is more stringent than comparable federal regulations or guidelines, the ~~board~~
25 department shall comply with this section by either revising the rule to conform to the federal regulations or
26 guidelines or by making the written finding, as provided under subsection (2), within a reasonable period of
27 time, not to exceed 12 months after receiving the petition. A petition under this section does not relieve the
28 petitioner of the duty to comply with the challenged rule. The ~~board~~ department may charge a petition filing fee

1 in an amount not to exceed \$250.

2 (b) A person may also petition the ~~board~~department for a rule review under subsection (4)(a) if the
3 ~~board~~ board of environmental review or the department adopts a rule after January 1, 1990, in an area in which
4 no federal regulations or guidelines existed and the federal government subsequently establishes comparable
5 regulations or guidelines that are less stringent than the previously adopted ~~board~~ rule.

6 (5) This section does not apply to a rule adopted under the emergency rulemaking provisions of 2-4-
7 303(1)."

8

9 **Section 82.** Section 75-6-121, MCA, is amended to read:

10 **"75-6-121. Delegation of review of small public water and sewer construction.** (1) If a local
11 government requests a delegation and the appropriate division of the local government has established
12 satisfactory review programs, the department may delegate to the division of local government review of:

13 (a) small public water and sewer systems; and

14 (b) extensions or alterations of existing public water and sewer systems that involve 50 or fewer
15 connections.

16 (2) The ~~board~~department may adopt rules regarding the delegation of review authority to divisions of
17 local government."

18

19 **Section 83.** Section 75-6-131, MCA, is amended to read:

20 **"75-6-131. Rules for regional public water supply systems.** The ~~board~~department shall adopt
21 rules for approval of regional public water supply systems established by a regional water authority pursuant to
22 Title 75, chapter 6, part 3. The rules must:

23 (1) include procedures for the construction of regional public water supply systems, including
24 regulatory provisions for a series of project segments over the construction period of the project as contained in
25 the final engineering report, as may be amended and approved by the United States bureau of reclamation, that
26 addresses the:

27 (a) approval of design and construction standards that may not be subject to change for 72 months;

28 (b) issuance of deviations from design and construction standards to remain in effect for 72 months;

1 and

2 (c) approval of an individual regional water supply system's standard construction contract documents
3 and provisions for amendments to those documents to remain in effect for the construction period of the project;

4 (2) implement plan and specification review periods or deviation request approval periods for storage,
5 pumping, and distribution portions of a regional public water supply system of not more than 40 calendar days
6 for the initial review by the department and not more than 20 working days for any subsequent reviews;

7 (3) avoid duplicate processes and regulations by coordinating and incorporating the review and
8 approval process applicable to a regional public water supply system by the United States bureau of
9 reclamation."

10

11 **Section 84.** ~~Section 75-10-103, MCA, is amended to read:~~

12 ~~"75-10-103. Definitions. Unless the context clearly requires otherwise, in this part, the following~~
13 ~~definitions apply:~~

14 ~~(1) "Board" means the board of environmental review provided for in 2-15-3502.~~

15 ~~(2)(1) "Container site" means a solid waste management facility that:~~

16 ~~(a) is generally open to the public for the collection of solid waste that is generated by more than one~~
17 ~~household or firm and that is collected in a refuse container with a total capacity of not more than 50 cubic~~
18 ~~yards; or~~

19 ~~(b) receives waste from waste collection vehicles and:~~

20 ~~(i) receives no more than 3,000 tons of waste each year;~~

21 ~~(ii) has control measures in place, including onsite staffing, to adequately contain solid wastes and~~
22 ~~blowing litter on the site and to minimize spills and leakage of liquid wastes; and~~

23 ~~(iii) is a site at which a local government unit requires commercial waste haulers to deposit wastes at~~
24 ~~the site only during hours that the site is staffed.~~

25 ~~(3)(2) "Department" means the department of environmental quality provided for in 2-15-3501.~~

26 ~~(4)(3) "Local government" means a county, incorporated city or town, or solid waste management~~
27 ~~district organized under the laws of this state.~~

28 ~~(5)(4) "Person" means any individual, firm, partnership, company, association, corporation, city, town,~~

~~or local governmental entity or any other state, federal, or private entity, whether organized for profit or not.~~

~~(6)(5) "Resource recovery facility" means any facility at which solid waste is processed for the purpose of extracting, converting to energy, or otherwise separating and preparing solid waste for reuse.~~

~~(7)(6) (a) "Solid waste" means all putrescible and nonputrescible wastes, including but not limited to garbage, rubbish, refuse, ashes, sludge from sewage treatment plants, water supply treatment plants, or air pollution control facilities; construction and demolition wastes; dead animals, including offal; discarded home and industrial appliances; and wood products or wood byproducts and inert materials.~~

~~(b) Solid waste does not mean municipal sewage, industrial wastewater effluents, mining wastes regulated under the mining and reclamation laws administered by the department, slash and forest debris regulated under laws administered by the department of natural resources and conservation, or marketable byproducts.~~

~~(8)(7) "Solid waste management system" means any system that controls the storage, treatment, recycling, recovery, or disposal of solid waste. For the purposes of this definition, a container site is not a component of a solid waste management system.~~

~~(9)(8) "State solid waste management and resource recovery plan" means the statewide plan formulated by the department as authorized by this part."~~

Section 85. Section 75-10-104, MCA, is amended to read:

"75-10-104. Duties of department. The department shall:

(1) prepare, adopt, and implement a state solid waste management and resource recovery plan as required by 75-10-111 and 75-10-807;

(2) ~~prepare adopt~~ rules necessary for the implementation of this part ~~for submission to the board,~~ including but not limited to rules:

(a) governing the submission of plans for a solid waste management system;

(b) (i) establishing, for the purpose of determining the tonnage or volume-based solid waste management fee that a facility is subject to under 75-10-115(1)(c), methods for determining or estimating the amount of solid waste incinerated or disposed of at a facility; and

(ii) governing the application fee, flat annual license renewal fee, and tonnage or volume-based

1 renewal fee for solid waste management systems;

2 (c) establishing the license application fee that a facility is subject to under 75-10-115(1)(a);

3 (d) establishing the flat annual license renewal fee that a facility is subject to under 75-10-115(1)(b);

4 (e) establishing the tonnage or volume-based annual renewal fee that a facility is subject to under 75-
5 10-115(1)(c); and

6 (f) providing procedures for the quarterly collection of the solid waste management fee provided for in
7 75-10-204(6);

8 (3) provide technical assistance to persons within the state for planning, designing, constructing,
9 financing, and operating:

10 (a) a solid waste management system in order to ensure that the system conforms to the state plan;

11 (b) integrated waste management programs; and

12 (c) collection, disposal, reduction, and educational programs for household hazardous waste and
13 small quantities of hazardous waste that are exempt from regulation under Title 75, chapter 10, part 4;

14 (4) enforce and administer the provisions of this part;

15 (5) approve plans for a proposed solid waste management system submitted by a local government;

16 and

17 (6) serve as a clearinghouse for information on waste reduction and reuse, recycling technology and
18 markets, composting, and household hazardous waste disposal, including chemical compatibility."

19

20 **Section 86.** Section 75-10-112, MCA, is amended to read:

21 **"75-10-112. Powers and duties of local government.** A local government may:

22 (1) plan, develop, and implement a solid waste management system consistent with the state's solid
23 waste management and resource recovery plan and propose modifications to the state's solid waste
24 management and resource recovery plan;

25 (2) upon adoption of the state plan ~~by the board~~, pass an ordinance or resolution to exempt the local
26 jurisdiction from complying with the state plan and subsequent rules implementing the state plan. The
27 ordinance or resolution must include a means to provide solid waste disposal to the citizens of the jurisdiction
28 as required in part 2 of this chapter.

- 1 (3) employ appropriate personnel to carry out the provisions of this part;
- 2 (4) purchase, rent, or execute leasing agreements for equipment and material necessary for the
- 3 implementation of a solid waste management system;
- 4 (5) cooperate with and enter into agreements with any persons in order to implement an effective
- 5 solid waste management system;
- 6 (6) receive gifts, grants, or donations or acquire by gift, deed, or purchase land necessary for the
- 7 implementation of any provision of this part;
- 8 (7) enforce the rules of the department or a local board of health pertaining to solid waste
- 9 management through the appropriate county attorney;
- 10 (8) apply for and utilize state, federal, or other available money for developing or operating a solid
- 11 waste management system;
- 12 (9) borrow from any lending agency funds available for assistance in planning a solid waste
- 13 management system;
- 14 (10) finance a solid waste management system by:
- 15 (a) subject to 15-10-420, fixing the assessment of a tax as authorized by state law; and
- 16 (b) as provided in 7-13-4108, fixing and collecting by ordinance or resolution the rates, rentals, and
- 17 charges for a solid waste management system on system customers;
- 18 (11) sell on an installment sales contract or lease to a person all or a portion of a solid waste
- 19 management system that the local government plans, designs, or constructs for the consideration and upon the
- 20 terms established by the local governments and consistent with the loan requirements set forth in this part and
- 21 rules adopted to implement this part;
- 22 (12) procure insurance against any loss in connection with property, assets, or activities;
- 23 (13) mortgage or otherwise encumber all or a portion of a solid waste management system when the
- 24 local government finds that the action is necessary to implement the purposes of this part, as long as the action
- 25 is consistent with the loan requirements set forth in this part and rules adopted to implement this part;
- 26 (14) hold or dispose of real property and, subject to agreements with lessors and lessees, develop or
- 27 alter the property by making improvements or betterments for the purpose of enhancing the value and
- 28 usefulness of the property;

(15) finance, design, construct, own, and operate a solid waste management system or contract for any or all of the powers authorized under this part;

(16) control the disposition of solid waste generated within the jurisdiction of the local government, except that, in the absence of an imminent threat to public health, safety, or the environment, a local government may not adopt a flow control or similar ordinance to require use of a specific transfer station or landfill for disposal of solid waste;

(17) enter into long-term contracts with local governments and private entities for:

(a) financing, designing, constructing, and operating a solid waste management system;

(b) marketing all raw or processed material recovered from solid waste;

(c) marketing energy products or byproducts resulting from processing or utilization of solid waste;

(18) finance an areawide solid waste management system through the use of any of the sources of revenue available to the implementation entity for public works projects, by the use of revenue bonds issued by the city or county, or by fees levied by a solid waste management district, whichever is appropriate;

(19) enter into interlocal agreements in order to achieve and implement the powers enumerated in this part;

(20) regulate the siting and operation of container sites."

Section 87. Section 75-10-115, MCA, is amended to read:

"75-10-115. Solid waste management fee. (1) The department may ~~prepare~~adopt rules for adoption ~~by the board~~, pursuant to 75-10-104 and ~~75-10-106~~, that set fees for the management and regulation of solid waste at facilities subject to regulation pursuant to part 2 of this chapter. Upon adoption ~~by the board~~, the department may collect the fees. These fees may include:

(a) a license application fee that reflects the cost of reviewing a new solid waste management system or a substantial change to an existing facility from the time an application is made until the license is issued or denied;

(b) a flat annual license renewal fee that reflects a minimal base fee related to the fixed costs of an annual inspection and license renewal. The initial annual fee year for a new facility commences on the date that the facility initially receives waste. The fee must be based upon the categorization of solid waste management

1 systems into separate classes identified by the following criteria:

2 (i) the quantity of solid waste received by the solid waste management system;

3 (ii) the nature of the solid waste received; and

4 (iii) the nature of the waste management occurring within the solid waste management system.

5 (c) a tonnage or volume-based fee on solid waste disposal.

6 (2) All fees collected must be deposited in the solid waste management account provided for in 75-
7 10-117."

8

9 **Section 88.** ~~Section 75-10-203, MCA, is amended to read:~~

10 ~~"75-10-203. Definitions. Unless the context requires otherwise, in this part, the following definitions~~
11 ~~apply:~~

12 ~~(1) "Board" means the board of environmental review provided for in 2-15-3502.~~

13 ~~(2)(1) "Department" means the department of environmental quality provided for in 2-15-3501.~~

14 ~~(3)(2) "Dispose" or "disposal" means the discharge, injection, deposit, dumping, spilling, leaking, or~~
15 ~~placing of any solid waste into or onto the land so that the solid waste or any constituent of it may enter the~~
16 ~~environment or be emitted into the air or discharged into any waters, including ground water.~~

17 ~~(4)(3) "Household hazardous waste" means products commonly used in the home that due to~~
18 ~~corrosivity, ignitability, reactivity, toxicity, or other chemical or physical properties are dangerous to human~~
19 ~~health or the environment. Household hazardous waste includes but is not limited to cleaning, home~~
20 ~~maintenance, automobile, personal care, and yard maintenance products.~~

21 ~~(5)(4) "Household waste" means any solid waste derived from households, including single and~~
22 ~~multiple residences, hotels, and motels, crew quarters, and campgrounds and other public recreation and public~~
23 ~~land management facilities.~~

24 ~~(6)(5) (a) "Municipal solid waste landfill" means any publicly or privately owned landfill or landfill unit~~
25 ~~that receives household waste or other types of waste, including commercial waste, nonhazardous sludge, and~~
26 ~~industrial solid waste.~~

27 ~~(b) The term does not include land application units, surface impoundments, injection wells, or waste~~
28 ~~piles.~~

~~(7)(6) "Person" means an individual, firm, partnership, company, association, corporation, city, town, local governmental entity, or any other governmental or private entity, whether organized for profit or not.~~

~~(8)(7) "Resource recovery" means the recovery of material or energy from solid waste.~~

~~(9)(8) "Resource recovery facility" means a facility at which solid waste is processed for the purpose of extracting, converting to energy, or otherwise separating and preparing solid waste for reuse.~~

~~(10)(9) "Resource recovery system" means a solid waste management system that provides for the collection, separation, recycling, or recovery of solid wastes, including disposal of nonrecoverable waste residues.~~

~~(11)(10) (a) "Solid waste" means all putrescible and nonputrescible wastes, including but not limited to garbage; rubbish; refuse; ashes; sludge from sewage treatment plants, water supply treatment plants, or air pollution control facilities; construction and demolition wastes; dead animals, including offal; discarded home and industrial appliances; and wood products or wood byproducts and inert materials.~~

~~(b) Solid waste does not mean municipal sewage, industrial wastewater effluents, mining wastes regulated under the mining and reclamation laws administered by the department of environmental quality, slash and forest debris regulated under laws administered by the department of natural resources and conservation, or marketable byproducts.~~

~~(12)(11) "Solid waste management system" means a system that controls the storage, treatment, recycling, recovery, or disposal of solid waste. For the purposes of this definition, a container site, as defined in 75-10-103, is not a component of a solid waste management system.~~

~~(13)(12) "Storage" means the actual or intended containment of wastes, either on a temporary basis or for a period of years.~~

~~(14)(13) "Transport" means the movement of wastes from the point of generation to any intermediate points and finally to the point of ultimate storage or disposal.~~

~~(15)(14) "Treatment" means a method, technique, or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any solid waste so as to neutralize the waste or so as to render it safer for transport, amenable for recovery, amenable for storage, or reduced in volume.~~

~~(16)(15) "Waste tire" means a tire that is no longer suitable for its original intended purpose because of~~

1 ~~wear, damage, or defect."~~

2

3 **Section 89.** ~~Section 75-10-206, MCA, is amended to read:~~

4 ~~"75-10-206. Variance. (1) A person may apply to the board department for a variance from rules~~
5 ~~adopted by the department pursuant to 75-10-204, except for rules adopted pursuant to 75-10-204(6). The~~
6 ~~board department may grant a variance if it finds that:~~

7 ~~(a) failure to comply with the rules does not result in a danger to public health or safety; or~~

8 ~~(b) compliance with the rules from which a variance is sought would produce hardship without~~
9 ~~producing benefits to the health and safety of the public that outweigh the hardship.~~

10 ~~(2) A variance may not be granted pursuant to this section except after a hearing pursuant to the~~
11 ~~Montana Administrative Procedure Act and consideration by the board department of the relative interests of~~
12 ~~the applicant and owners of the property likely to be affected by the waste disposal system under consideration.~~

13 ~~(3) This section may not be construed as relieving the board department from the obligation to comply~~
14 ~~with the Resource Conservation and Recovery Act of 1976, as amended, or as allowing the board department~~
15 ~~to grant a variance less restrictive than that act."~~

16

17 **Section 90.** Section 75-10-221, MCA, is amended to read:

18 **"75-10-221. License required -- application.** (1) Except as provided in 75-10-214, a person may not
19 dispose of solid waste or operate a solid waste management system without a license from the department.

20 (2) The department shall provide application forms for a license as provided in this part.

21 (3) The application must contain the name and business address of the applicant, the location of the
22 proposed solid waste management system, a plan of operation and maintenance, and other information that the
23 department may by rule require.

24 (4) The license provided for in this section is for a period not to exceed 12 months unless renewed by
25 the department.

26 (5) The department may require submission of a new application if the department determines that
27 the plan of operation, the management of the solid waste system, or the geological or ground water conditions
28 have changed since the license was initially approved.

(6) In preparing rules for board adoption that establish fees for licenses and the review of applications pursuant to 75-10-104(2), the department shall consider the tonnage or volume of waste to be managed and the size of the proposed solid waste management system. The fees adopted by the board must encourage reduction in the tonnage or volume of waste to be managed and cover the costs to the department of initially reviewing and annually licensing the solid waste management system."

Section 91. ~~Section 75-10-223, MCA, is amended to read:~~

~~"75-10-223. Refusal by local health officer -- appeal to board department. (1) The local health officer may refuse to validate a license issued under this part only upon a finding that the requirements of this part and the rules implementing this part cannot be satisfied. If the local health officer refuses to validate the license, the local health officer shall notify the applicant, the department, and any other interested person in writing.~~

~~(2) The applicant or any person aggrieved by the decision of the local health officer not to validate a license may appeal the decision to the board department within 30 days after receiving written notice of the local health officer's decision.~~

~~(3) The hearing before the board must be held pursuant to the contested case provisions of the Montana Administrative Procedure Act."~~

Section 92. ~~Section 75-10-224, MCA, is amended to read:~~

~~"75-10-224. Revocation or denial of license by department. The department may deny or revoke a license to operate a solid waste management system after giving the applicant and the local health officer written notice and an opportunity for a hearing before the board department. The decision to deny or revoke a license may be made only after a finding that a solid waste management system cannot be operated or is not being operated in compliance with this part or a rule or order issued pursuant to this part. The hearing held before the board on a denial or revocation shall must be held pursuant to the provisions of the Montana Administrative Procedure Act."~~

Section 93. ~~Section 75-10-227, MCA, is amended to read:~~

~~"75-10-227. — Administrative enforcement. (1) When the department believes that a violation of part 1 or this part, a violation of a rule adopted under part 1 or this part, a violation of an order issued under this part, or a violation of a permit provision has occurred, it may serve written notice of the violation on the alleged violator or the violator's agent. The notice must specify the provision of law, rule, or permit alleged to be violated and the facts alleged to constitute a violation and may include an order to take necessary corrective action within a reasonable period of time stated in the order, an order assessing an administrative penalty pursuant to 75-10-228, or both. The order becomes final unless, within 30 days after the notice is served, the person named requests in writing a hearing before the board department. On receipt of the request, the board department shall schedule a hearing. Service by mail is complete on the date of mailing.~~

~~(2) If, after a hearing held under subsection (1), the board department finds that a violation has occurred, it shall either affirm or modify the department's order. An order issued by the department or by the board may prescribe the date by which the violation must cease and may prescribe time limits for particular action. If, after a hearing, the board department finds that a violation has not occurred, it shall rescind the department's order.~~

~~(3) Instead of issuing an order pursuant to subsection (1), the department may either:~~

~~(a) require the alleged violator to appear before the board department for a hearing at a time and place specified in the notice and answer the charges; or~~

~~(b) initiate action under part 1 or this part.~~

~~(4) This section does not prevent the board or department from making efforts to obtain voluntary compliance through warning, conference, or any other appropriate means.~~

~~(5) The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing held under this section."~~

Section 94. ~~Section 75-10-403, MCA, is amended to read:~~

~~"75-10-403. — Definitions. Unless the context requires otherwise, in this part, the following definitions apply:~~

~~(1) "Board" means the board of environmental review provided for in 2-15-3502.~~

~~(2)(1) "Department" means the department of environmental quality provided for in 2-15-3501.~~

~~(3)(2) "Dispose" or "disposal" means the discharge, injection, deposit, dumping, spilling, leaking, or placing of any hazardous waste into or onto the land or water so that the hazardous waste or any constituent of the hazardous waste may enter the environment or be emitted into the air or discharged into any waters, including ground water.~~

~~(4)(3) "Environmental protection law" means a law contained in or an administrative rule adopted pursuant to Title 75, chapter 2, 5, 10, or 11.~~

~~(5)(4) "Facility" or "hazardous waste management facility" means all contiguous land and structures, other appurtenances, and improvements on the land used for treating, storing, or disposing of hazardous waste. A facility may consist of several treatment, storage, or disposal operational units.~~

~~(6)(5) "Generation" means the act or process of producing waste material.~~

~~(7) (6) "Generator" means any person, by site, whose act or process produces hazardous waste or whose act first causes a hazardous waste to become subject to regulation under this part.~~

~~(8)(7) (a) "Hazardous waste" means a waste or combination of wastes that, because of its quantity, concentration, or physical, chemical, or infectious characteristics, may:~~

~~(i) cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness; or~~

~~(ii) pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of or otherwise managed.~~

~~(b) Hazardous wastes do not include those substances governed by Title 82, chapter 4, part 2.~~

~~(9)(8) "Hazardous waste management" means the management of the collection, source separation, storage, transportation, processing, treatment, recovery, and disposal of hazardous wastes.~~

~~(10)(9) "Hazardous waste transfer facility" means any land, structure, or improvement, including loading docks, parking areas, holding sites, and other similar areas, used for the transfer and temporary storage of hazardous wastes and where shipments of hazardous waste are temporarily held for a period of 10 days or less during the normal course of transportation up to but not including the point of ultimate treatment, storage, or disposal.~~

~~(11)(10) "Manifest" means the shipping document that is originated and signed by the generator and that is used to identify the hazardous waste and its quantity, origin, and destination during its transportation.~~

~~(12)(11) "Person" means the United States, an individual, firm, trust, estate, partnership, company, association, corporation, city, town, local governmental entity, or any other governmental or private entity, whether organized for profit or not.~~

~~(13)(12) "Remediation waste" means, for the purposes of fee assessment only, all hazardous waste, debris, and media, including ground water, surface water, soils, and sediments, that are managed for implementing cleanup.~~

~~(14)(13) "Storage" means the actual or intended containment of hazardous wastes, either on a temporary basis or for a period of years.~~

~~(15)(14) "Transportation" means the movement of hazardous wastes from the point of generation to any intermediate points and finally to the point of ultimate storage or disposal.~~

~~(16)(15) "Transporter" means a person engaged in the offsite transportation of hazardous waste by air, rail, highway, or water.~~

~~(17)(16) "Treatment" means a method, technique, or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any hazardous waste so as to neutralize the waste or so as to render it nonhazardous, safer for transportation, amenable for recovery, amenable for storage, or reduced in volume.~~

~~(18)(17) "Used oil" means any oil that has been refined from crude oil or any synthetic oil, either of which has been used and as a result of that use is contaminated by physical or chemical impurities."~~

Section 95. ~~Section 75-10-406, MCA, is amended to read:~~

~~**"75-10-406. Permits.** (1) A person may not construct or operate a hazardous waste management facility without first obtaining a permit from the department for the facility, except that the department may, by rule, prescribe conditions under which specified hazardous wastes or specified quantities of hazardous waste may be disposed of at solid waste disposal sites licensed by the department pursuant to Title 75, chapter 10, part 2.~~

~~(2) Any person who wishes to construct or operate a hazardous waste management facility shall apply to the department for a permit on forms provided by the department. An application must contain, at a minimum, the name and business address of the applicant, the location of the proposed facility, a plan of~~

~~operation and maintenance, and a description of pertinent site characteristics.~~

~~(3)—A permit may be issued for a period specified by the department and is subject to renewal by the department upon a showing that the facility has been operated in accordance with the terms of the permit and the rules applicable to the facility and in compliance with the provisions of this part and any applicable order of the board or department.~~

~~(4)—Any permit issued is subject to revocation by the department for failure of the permittee to comply with the terms and conditions of the permit, the department rules, an order of the board or the department, or the provisions of this part. Any person who is denied a permit by the department or who has a permit revoked or modified shall must be afforded an opportunity for a hearing before the board department upon written application made within 30 days after service of notice of denial, revocation, or modification by mail. Service by mail is complete upon mailing.~~

~~(5)—Notwithstanding any other provisions of this part, the department may, in the event of an imminent and substantial danger to public health or the environment, issue a temporary emergency permit to any person for treatment, storage, or disposal of hazardous waste or to any facility to handle hazardous waste not covered by the existing facility permit. Emergency permits may be oral or written, may not exceed 90 days in duration, and may be terminated by the department at any time prior to 90 days.~~

~~(6)—The department may, as it considers appropriate, grant permits by rule to classes or categories of hazardous waste management facilities where the facility owner or operator is already licensed or permitted by the department pursuant to other state environmental statutes or where an interim period exists until final administrative disposition of a permit application is made.~~

~~(7)—In permits issued under this section, the department shall require corrective action for all releases of hazardous waste or constituents at a treatment, storage, or disposal facility, including corrective action for releases that extend beyond the facility boundaries if necessary to protect public health or the environment. A permit must contain a schedule of compliance for corrective action and requirements for assurance of financial responsibility for completion of the corrective action.~~

~~(8)—Each permit issued by the department to a person owning or operating a facility must contain the terms and conditions the department considers necessary to protect human health and the environment."~~

Section 96. ~~Section 75-10-408, MCA, is amended to read:~~

~~"75-10-408. Variances -- renewals. (1) A person who is a generator or transporter of hazardous wastes or who owns or operates a hazardous waste management facility may apply to the board department for a variance or partial variance from the application of or compliance with any requirement of this part or any rule adopted under this part. The board department may grant a variance or partial variance if it finds that:~~

~~(a) the applicant's actions or proposed actions regarding generation, transportation, treatment, storage, or disposal of hazardous wastes do not constitute a danger to public health or safety or cause substantially adverse environmental effects; and~~

~~(b) the application of or compliance with the requirement or rule would produce unreasonable hardship without equal or greater benefits to the public.~~

~~(2) No variance or partial variance may be granted except after public hearing on due notice and until the board has considered department considers the relative interests of the applicant, other persons specifically affected, and the general public.~~

~~(3) No variance or partial variance may be granted for a period to exceed 1 year, but the variance or partial variance may be renewed for like periods if no complaint is made to the board department because of it or if, after the complaint has been made and duly considered at a public hearing held by the board department on due notice, the board department finds that renewal is justified. No renewal may be granted except on application therefor for renewal. An application for renewal shall must be made in the manner and upon such notice as specified in rules promulgated under this part. A renewal pursuant to this subsection shall must be on the same grounds and subject to the same limitations and requirements as provided in subsection (1).~~

~~(4) A variance, partial variance, or renewal thereof is not a right of the applicant or holder thereof of the variance, partial variance, or renewal but shall must be granted at the discretion of the board department. However, a person adversely affected by a variance, partial variance, or renewal granted by the board department may obtain judicial review thereof as provided by the judicial review of contested case provisions of the Montana Administrative Procedure Act.~~

~~(5) Nothing in this section and no variance, partial variance, or renewal granted pursuant to this section may be construed to prevent or limit the application of the emergency provisions and procedures of 75-10-415.~~

~~(6) Under no conditions may a variance be granted by the board department that would result in a less stringent requirement or degree of control than would be imposed by the applicable federal regulations adopted under the federal Resource Conservation and Recovery Act."~~

Section 97. ~~Section 75-10-409, MCA, is amended to read:~~

~~"**75-10-409. Compliance monitoring and reporting.** (1) The department may, as a condition of a permit, require the owner or operator of a facility to install equipment, collect and analyze samples, and maintain records in order to monitor and demonstrate compliance with this part, rules adopted under this part, any order of the board or department, and permit conditions."~~

~~(2) The department may require the owner or operator of a facility to submit reports on the compliance monitoring activities, including notice to the department of any noncompliance with permit conditions, rules adopted under this part, the provisions of this part, or any orders of the department or board."~~

Section 98. ~~Section 75-10-413, MCA, is amended to read:~~

~~"**75-10-413. Administrative enforcement.** (1) When the department believes that a violation of this part, a rule adopted under this part, or a permit provision has occurred, it may serve written notice of the violation personally or by certified mail on the alleged violator or the violator's agent. The notice must specify the provision of this part, the rule, or the permit provision alleged to be violated and the facts alleged to constitute a violation and may include an order to take necessary corrective action within a reasonable period of time stated in the order. The order becomes final unless, within 30 days after the notice is served, the person named requests, in writing, a hearing before the board department. On receipt of the request, the board department shall schedule a hearing. Service by mail is complete on the date of mailing."~~

~~(2) If, after a hearing held under subsection (1), the board department finds that a violation has occurred, it shall either affirm or modify the department's order. An order issued by the department or by the board may prescribe the date by which the violation must cease and may prescribe time limits for particular action. If, after hearing, the board department finds that a violation has not occurred, it shall rescind the department's order."~~

~~(3) In addition to or instead of issuing an order pursuant to subsection (1), the department may:~~

~~(a) require the alleged violator to appear before the board or department, by subpoena or subpoena duces tecum, for a hearing at a time and place specified in the notice to answer the charges complained of or to provide information regarding the alleged violation or its actual or potential impact on public health and welfare or the environment; or~~

~~(b) initiate action under 75-10-414, 75-10-417, or 75-10-418.~~

~~(4) In the case of disobedience of any subpoena issued and served under this section or of the refusal of any witness to testify as to any material matter with regard to which the witness may be interrogated in a hearing or investigation before the board or the department, the board or department may apply to any district court in the state for an order to compel compliance with the subpoena or the giving of testimony. The court shall hear the matter as expeditiously as possible. If the disobedience or refusal is found to be unjustified, the court shall enter an order requiring compliance. Disobedience of the order is punishable by contempt of court in the same manner and by the same procedures as is provided for like conduct committed in the course of civil actions in district court.~~

~~(5) This section does not prevent the board or department from making efforts to obtain voluntary compliance through warning, conference, or any other appropriate means."~~

Section 99. ~~Section 75-10-414, MCA, is amended to read:~~

~~**"75-10-414. Injunctions.** The department may institute and maintain in the name of the state actions for injunctive relief as provided in Title 27, chapter 19, to:~~

~~(1) immediately restrain any person from engaging in any unauthorized activity which is endangering or causing damage to public health or the environment;~~

~~(2) enjoin a violation of this part, a rule adopted under this part, an order of the department or the board, or a permit provision without the necessity of prior revocation of the permit; or~~

~~(3) require compliance with this part, a rule adopted under this part, an order of the department or the board, or a permit provision."~~

Section 100. ~~Section 75-10-417, MCA, is amended to read:~~

~~**"75-10-417. Civil penalties.** (1) A person who violates any provision of this part, a rule adopted under~~

~~this part, an order of the department or the board, or a permit is subject to a civil penalty not to exceed \$10,000 for each violation. Each day of violation constitutes a separate violation. Penalties assessed under this section must be determined in accordance with the penalty factors in 75-1-1001.~~

~~(2) The department may institute and maintain in the name of the state any enforcement proceedings under this section. Upon request of the department, the attorney general or the county attorney of the county of violation shall petition the district court to impose, assess, and recover the civil penalty. An action to recover penalties must be brought in the district court of the county in which the violation occurred or, if mutually agreed on by the parties in the action, in the district court of the first judicial district, Lewis and Clark County.~~

~~(3) Action under this section does not bar:~~

~~(a) enforcement of this part, rules adopted under this part, orders of the department or the board, or permits by injunction or other appropriate remedy; or~~

~~(b) action under 75-10-418.~~

~~(4) Money collected under this section must be deposited in the state general fund."~~

Section 101. ~~Section 75-10-418, MCA, is amended to read:~~

~~"75-10-418. Criminal penalties. (1) A person is guilty of an offense under this section if the person knowingly:~~

~~(a) transports any hazardous waste to an unpermitted facility;~~

~~(b) treats, stores, or disposes of hazardous waste subject to regulation under this part or the rules adopted under this part without a permit or contrary to a material permit condition;~~

~~(c) omits material information or makes any false statement or representation in any application, label, manifest, record, report, permit, or other document filed, maintained, or used for compliance with provisions of this part or rules adopted under this part pertaining to the handling of hazardous waste;~~

~~(d) generates, stores, treats, transports, disposes of, or otherwise handles any used oil or hazardous waste regulated under this part or rules adopted under this part and knowingly destroys, alters, conceals, or fails to file any record, application, manifest, report, or other document required to be maintained or filed in compliance with the provisions of this part, an order issued under this part, or rules adopted under this part; or~~

~~(e) transports or causes to be transported without a manifest any hazardous waste required to be~~

1 ~~accompanied by a manifest.~~

2 ~~(2)—A person who is guilty of an offense under subsection (1) is subject to a fine of not more than~~
3 ~~\$25,000 per violation or imprisonment for a period not to exceed 3 years, or both. Each day of violation~~
4 ~~constitutes a separate violation.~~

5 ~~(3)—A person who knowingly violates any requirement of this part or any rule or material permit~~
6 ~~condition issued pursuant to this part (except those violations specified in subsection (1)) regarding any~~
7 ~~hazardous waste that is subject to regulation is guilty of an offense and subject to a fine of up to \$5,000 per~~
8 ~~violation or subject to imprisonment not to exceed 6 months, or both. Each day of violation constitutes a~~
9 ~~separate violation.~~

10 ~~(4)—Upon a second conviction for a violation of this section, the maximum penalties specified in this~~
11 ~~section must be doubled.~~

12 ~~(5)—Action under this section does not bar enforcement of this part, rules made under this part, orders~~
13 ~~of the department or the board, or permits by injunction or other appropriate remedy.~~

14 ~~(6)—Money collected under this section, except money collected in a justice's court, must be deposited~~
15 ~~in the state general fund."~~

16
17 **Section 102.** ~~Section 75-10-424, MCA, is amended to read:~~

18 ~~"75-10-424. —Administrative penalty. (1) The department may assess a person who violates a~~
19 ~~provision of this part or a rule adopted under this part an administrative penalty, not to exceed \$10,000 for each~~
20 ~~violation. Each day of violation constitutes a separate violation, but the maximum penalty may not exceed~~
21 ~~\$100,000 for any related series of violations. Assessment of an administrative penalty under this section must~~
22 ~~be made in conjunction with an order or administrative action authorized by this chapter.~~

23 ~~(2)—An administrative penalty may not be assessed under this section unless the alleged violator is~~
24 ~~given notice and opportunity for a hearing before the board department pursuant to Title 2, chapter 4, part 6.~~

25 ~~(3)—In determining the appropriate amount of an administrative penalty, the department shall consider~~
26 ~~the penalty factors in 75-1-1001.~~

27 ~~(4)—If the department is unable to collect the administrative penalty or if a person fails to pay all or any~~
28 ~~portion of the administrative penalty as determined by the department, the department may file an action to~~

~~recover the amount not paid. The action must be brought in the district court of the county in which the violation occurred or, if mutually agreed on by the parties in the action, in the district court of the first judicial district, Lewis and Clark County.~~

~~(5) Action under this section does not bar action under 75-10-413 through 75-10-418 or any other appropriate remedy.~~

~~(6) Administrative penalties collected under this section must be deposited in the state general fund."~~

Section 103. ~~Section 75-10-501, MCA, is amended to read:~~

~~"75-10-501. (Temporary) Definitions. Unless the context requires otherwise, in this part, the following definitions apply:~~

~~(1) "Board" means the board of environmental review provided for in 2-15-3502.~~

~~(2)(1) "Component part" means any identifiable part of a discarded, ruined, wrecked, or dismantled motor vehicle, including but not limited to fenders, doors, hoods, engine blocks, motor parts, transmissions, frames, axles, wheels, tires, and passenger compartment fixtures.~~

~~(3)(2) "Department" means the department of environmental quality provided for in 2-15-3501.~~

~~(4)(3) "Junk mobile home" means a mobile home as defined in 15-24-201 that is wrecked, ruined, dismantled, or abandoned and is no longer fit for human habitation.~~

~~(5)(4) "Junk nonmotorized vehicle" means an inoperative vehicle that is not constructed with a motor and that is discarded, ruined, wrecked, or dismantled.~~

~~(6)(5) (a) "Junk vehicle" means a motor vehicle, including component parts:~~

~~(i) that is discarded, ruined, wrecked, or dismantled;~~

~~(ii) that, except as provided in subsection (6)(b) (5)(b), is not lawfully and validly licensed; and~~

~~(iii) that remains inoperative or incapable of being driven.~~

~~(b) If a vehicle is permanently registered under 61-3-562 and meets the criteria for a junk vehicle under subsection (6)(a), (5)(a), the vehicle is a junk vehicle.~~

~~(7)(6) "Motor vehicle graveyard" means a collection point established by a county for junk motor vehicles prior to their disposal.~~

~~(8)(7) (a) "Motor vehicle wrecking facility" means:~~

~~(i) a facility buying, selling, or dealing in four or more vehicles a year, of a type required to be licensed, for the purpose of wrecking, dismantling, disassembling, or substantially changing the form of the motor vehicle; or~~

~~(ii) a facility that buys or sells component parts, in whole or in part, and deals in secondhand motor vehicle parts. A facility that buys or sells component parts of a motor vehicle, in whole or in part, is a motor vehicle wrecking facility whether or not the buying or selling price is based upon weight or any other type of classification.~~

~~(b) The term does not include a garage where wrecked or disabled motor vehicles are temporarily stored for a reasonable period of time for inspection, repairs, or subsequent removal to a junkyard.~~

~~(9)(8) "Person" means any individual, firm, partnership, company, association, corporation, city, town, local governmental entity, or other governmental or private entity, whether organized for profit or not.~~

~~(10)(9) "Public view" means any point 6 feet above the surface of the center of a public road from which junk vehicles can be seen.~~

~~(11)(10) "Shielding" means the construction or use of fencing or constructed or natural barriers to conceal junk vehicles from public view. (Terminates June 30, 2021--sec. 5, Ch. 427, L. 2019.)~~

~~**75-10-501. (Effective July 1, 2021) Definitions.** Unless the context requires otherwise, in this part, the following definitions apply:~~

~~(1) "Board" means the board of environmental review provided for in 2-15-3502.~~

~~(2)(1) "Component part" means any identifiable part of a discarded, ruined, wrecked, or dismantled motor vehicle, including but not limited to fenders, doors, hoods, engine blocks, motor parts, transmissions, frames, axles, wheels, tires, and passenger compartment fixtures.~~

~~(3)(2) "Department" means the department of environmental quality provided for in 2-15-3501.~~

~~(4)(3) (a) "Junk vehicle" means a motor vehicle, including component parts:~~

~~(i) that is discarded, ruined, wrecked, or dismantled;~~

~~(ii) that, except as provided in subsection (4)(b), (3)(b), is not lawfully and validly licensed; and~~

~~(iii) that remains inoperative or incapable of being driven.~~

~~(b) If a vehicle is permanently registered under 61-3-562 and meets the criteria for a junk vehicle under subsection (4)(a), (3)(a), the vehicle is a junk vehicle.~~

~~(5)(4) "Motor vehicle graveyard" means a collection point established by a county for junk motor vehicles prior to their disposal.~~

~~(6)(5) (a) "Motor vehicle wrecking facility" means:~~

~~(i) a facility buying, selling, or dealing in four or more vehicles a year, of a type required to be licensed, for the purpose of wrecking, dismantling, disassembling, or substantially changing the form of the motor vehicle; or~~

~~(ii) a facility that buys or sells component parts, in whole or in part, and deals in secondhand motor vehicle parts. A facility that buys or sells component parts of a motor vehicle, in whole or in part, is a motor vehicle wrecking facility whether or not the buying or selling price is based upon weight or any other type of classification.~~

~~(b) The term does not include a garage where wrecked or disabled motor vehicles are temporarily stored for a reasonable period of time for inspection, repairs, or subsequent removal to a junkyard.~~

~~(7)(6) "Person" means any individual, firm, partnership, company, association, corporation, city, town, local governmental entity, or other governmental or private entity, whether organized for profit or not.~~

~~(8)(7) "Public view" means any point 6 feet above the surface of the center of a public road from which junk vehicles can be seen.~~

~~(9)(8) "Shielding" means the construction or use of fencing or constructed or natural barriers to conceal junk vehicles from public view."~~

Section 104. ~~Section 75-10-515, MCA, is amended to read:~~

~~"75-10-515. Appeals. A decision by the department to issue, deny, or revoke a motor vehicle wrecking facility or graveyard license may be appealed to the board department within 30 days after receipt of official notice of the department's decision."~~

Section 105. ~~Section 75-10-540, MCA, is amended to read:~~

~~"75-10-540. Administrative enforcement. (1) When the department determines that a violation of this part, a violation of a rule adopted or an order issued under this part, or a violation of a license provision has occurred, it may serve written notice of the violation on the alleged violator or the violator's agent. The notice~~

1 must specify the law, rule, or license provision alleged to be violated and the facts alleged to constitute a
2 violation and may include an order to take necessary corrective action within a reasonable period of time, an
3 order assessing an administrative penalty pursuant to 75-10-542, or both. The order becomes final 30 days
4 after the notice is served unless the person named requests, in writing, a hearing before the board department.
5 On receipt of the request for a hearing, the board department shall schedule a hearing. Service by mail is
6 complete on the date of mailing.

7 (2) If, after a hearing held under subsection (1), the board department finds that a violation has
8 occurred, it shall either affirm or change the department's order. An order may prescribe the date by which the
9 violation must cease and may prescribe time limits for particular action. If, after a hearing, the board department
10 finds that a violation has not occurred, it shall rescind the department's order.

11 (3) The department shall make efforts to obtain voluntary compliance through warning, conference, or
12 any other appropriate means before issuing an order pursuant to subsection (1).

13 (4) The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4,
14 part 6, apply to a hearing held under this section."

15
16 **Section 106.** Section 75-10-714, MCA, is amended to read:

17 **"75-10-714. Administrative penalties.** (1) In lieu of proceeding under 75-10-711(5), the department
18 may assess penalties of not more than \$1,000 a day for each violation against a person liable under 75-10-
19 715(1) for a release or threat of release who has failed or refused to comply with an order issued by the
20 department pursuant to 75-10-711(4) or against a person who has failed or refused to comply with an order
21 issued by the department pursuant to 75-10-707(5).

22 (2) In determining the amount of any penalty assessed pursuant to this section, the department shall
23 take into account the nature, circumstances, extent, and gravity of the noncompliance and, with respect to the
24 person liable under 75-10-715(1):

25 (a) the person's ability to pay;

26 (b) any prior history of violations;

27 (c) the degree of culpability;

28 (d) the economic benefit or savings, if any, resulting from the noncompliance; and

~~(e)—any other matters that justice may require.~~

~~(3)—An administrative penalty may not be collected pursuant to this section unless the person charged with the noncompliance is given notice and opportunity for a hearing with respect to the noncompliance. The hearing is before the board of environmental review the department. A hearing may be requested by submitting a written request stating the reason for the request within 30 days after receipt of the notice of penalty assessment.~~

~~(4)—The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing held under this section.~~

~~(5)—Administrative penalties collected under this section must be deposited in the environmental quality protection fund established in 75-10-704."~~

Section 107. ~~Section 75-10-727, MCA, is amended to read:~~

~~"75-10-727.—Institutional controls. (1) An owner of real property may, with department approval, restrict the use of the owner's real property to mitigate the risk posed to the public health, safety, and welfare and the environment by imposing on the real property, without conveying the property or creating a dominant and servient estate, an appropriate institutional control.~~

~~(2)—An institutional control restricting present and future real property rights is placed on a property by filing a written instrument evidencing the restrictions to be placed on the use of the property with the county clerk in the county in which the property is located.~~

~~(3)—An institutional control that restricts real property runs with the land and is binding on all successors in interest to real property until the institutional control is removed.~~

~~(4)—An institutional control must be removed if there is not an unacceptable risk posed to public health, safety, and welfare and the environment. An owner may request department approval to remove all or a portion of the institutional controls from the real property. The department shall review the request and provide the owner with its decision to approve or deny the request within 120 days from the department's receipt of the request. If the department denies the request, it shall provide the owner with a written explanation of the denial. A department decision to deny the request may be appealed to the board of environmental review department and conducted as a contested case proceeding pursuant to Title 2, chapter 4.~~

~~(5) If the department or the board approves an owner's request to remove all or a portion of the institutional controls, the owner shall file the approval with the county clerk in the county in which the real property is located."~~

Section 108. ~~Section 75-10-732, MCA, is amended to read:~~

~~"75-10-732. Eligibility. (1) A facility where there has been a release or threatened release of a hazardous or deleterious substance that may present an imminent and substantial endangerment to the public health, safety, or welfare or the environment may be eligible for voluntary cleanup procedures under this part, except for facilities that meet one of the following criteria at the time of application for a voluntary cleanup plan:~~

~~(a) a facility that is listed or proposed for listing on the national priorities list pursuant to 42 U.S.C. 9601, et seq.;~~

~~(b) a facility for which an order has been issued or consent decree has been entered into pursuant to this part;~~

~~(c) a facility that is the subject of an agency order or an action filed in district court by any state agency that addresses the release or threatened release of a hazardous or deleterious substance; or~~

~~(d) a facility where the release or threatened release of a hazardous or deleterious substance is regulated by the Montana Hazardous Waste Act and regulations under that act; or~~

~~(e) a facility that is the subject of pending action under this part because the facility has been issued a notice commencing a specified period of negotiations on an administrative order on consent.~~

~~(2) Notwithstanding the provisions of subsections (1)(b) through (1)(e), the department may agree to accept and may approve an application for a voluntary cleanup plan for a facility.~~

~~(3) The department may determine that a facility that is potentially eligible for voluntary cleanup exhibits complexities regarding protection of public health, safety, and welfare and the environment and that the complexities should be addressed under an administrative order or consent decree pursuant to this part. This determination may be made only after consultation with any person desiring to conduct a voluntary cleanup at the facility.~~

~~(4) If an applicant who submits an application for a voluntary cleanup plan disagrees with the department's decision to reject the filing of the application under subsection (1) or (3) or disagrees with the~~

~~department's decision to disapprove the voluntary cleanup plan submitted pursuant to 75-10-736, the applicant may, within 30 days of receipt of the department's written decision pursuant to 75-10-736, submit a written request for a hearing before the board of environmental review department. In reviewing a department decision to reject an application under subsection (1) or (3) or to disapprove a voluntary cleanup plan submitted pursuant to 75-10-736, the board department shall apply the standards of review specified in 2-4-704. The hearing must be held within 2 months at the regular meeting of the board or at the time mutually agreed to by the board, the department, and the applicant. The hearing and any appeals must be conducted in accordance with the contested case proceedings pursuant to Title 2, chapter 4, parts 6 and 7. A hearing before the board may not be requested regarding a decision of the department made pursuant to subsection (2)."~~

Section 109. ~~Section 75-10-736, MCA, is amended to read:~~

~~"75-10-736. Approval of voluntary cleanup plan -- time limits -- content of notice -- expiration of approval. (1) The department shall review for completeness, including adequacy and accuracy, in accordance with the requirements of 75-10-734, the environmental assessment component of a voluntary cleanup plan and shall provide a written completeness notice to the applicant within 30 days of receipt. The completeness notice must note all deficiencies identified in the information submitted.~~

~~(2) Once the department determines that the environmental assessment component of a voluntary cleanup plan is complete, the applicant may submit the remediation proposal component. The department shall review the remediation proposal for completeness, including adequacy and accuracy, in accordance with the requirements of 75-10-734, and shall provide a written completeness notice to the applicant within 30 days of receipt. The completeness notice must note all deficiencies identified in the information submitted.~~

~~(3) Once the department determines that the application for a voluntary cleanup plan is complete pursuant to subsections (1) and (2), the department shall provide formal written notification of approval or disapproval within 60 days unless the applicant and the department agree to an extension of the review to a date certain. The review must be limited to a review of the materials submitted by the applicant, public comments, and documents or information readily available to the department. The department shall communicate with the applicant during the review period to ensure that the applicant has the opportunity to address the public comments.~~

~~(4) (a) If the department receives five applications for review of either component of a voluntary cleanup plan in a calendar month, including applications deferred from prior months, the department may notify any additional applicants in that month that their plans must be reviewed in the order received. The 60-day period for department completeness review of deferred applications must begin on the first day of the subsequent month that each plan is eligible for review.~~

~~(b) The department shall discontinue accepting either component of voluntary cleanup applications when 15 applications are pending and are being reviewed by the department. The department shall establish a waiting list for applications and shall consider the applications in order of submittal.~~

~~(c) If the department has received multiple applications for a voluntary cleanup at the same facility, the department shall notify all of the applicants and offer them the opportunity to submit a joint application.~~

~~(5) Consistent with the provisions of 75-10-707, the department may access the facility during review of either component of the application and implementation of the voluntary cleanup plan to confirm information provided by the applicant and verify that the cleanup is being conducted consistent with the approved plan.~~

~~(6) (a) The department shall approve a voluntary cleanup plan if the department concludes that the plan meets the requirements specified in 75-10-734 and will attain a degree of cleanup and control of hazardous or deleterious substances that complies with the requirements of 75-10-721.~~

~~(b) Except for the period necessary for the operation and maintenance of the approved remediation proposal, the department may not approve a voluntary remediation proposal that would:~~

~~(i) take longer than 60 months after department approval to achieve the cleanup levels proposed by the applicant under 75-10-734(3)(a)(i) and approved by the department; or~~

~~(ii) take longer than 120 months after department approval to achieve the cleanup levels for ground water proposed by the applicant under 75-10-734(3)(a)(i) and approved by the department, including ground water standards identified as applicable or relevant state or federal environmental requirements, criteria, or limitations pursuant to 75-10-721.~~

~~(7) If a voluntary cleanup plan is not approved by the department, the department shall promptly provide the applicant with a written statement of the reasons for denial. The denial may be appealed to the board of environmental review department in accordance with the provisions of 75-10-732(4).~~

~~(8) The approval of a voluntary cleanup plan by the department applies only to conditions at the~~

1 facility that are known to the department at the time of department approval. If a voluntary remediation proposal
2 is not initiated within 12 months and, except for the period necessary for the operation and maintenance of the
3 approved remediation proposal, is not completed within 60 months after approval by the department, the
4 department's approval lapses. However, the department may grant an extension of the time limit for completion
5 of the voluntary cleanup plan.

6 (9) ~~If conditions are discovered during implementation of a voluntary cleanup plan that were not~~
7 ~~identified in the environmental assessment component pursuant to subsection (1), affect the risk to public~~
8 ~~health, safety, or welfare or the environment, and change the scope of the approved plan, the applicant shall~~
9 ~~notify the department within 10 days of discovery. The department may require the applicant to submit an~~
10 ~~amendment to the approved plan to address the conditions or may determine that a voluntary cleanup plan is~~
11 ~~no longer appropriate pursuant to 75-10-732(3).~~

12 (10) ~~Departmental approval is void if the applicant or the applicant's agents:~~

13 (a) ~~fail to materially comply with the voluntary cleanup plan;~~

14 (b) ~~submit materially misleading information in the application or during implementation of the~~
15 ~~voluntary cleanup plan; or~~

16 (c) ~~fail to report any newly discovered information to the department during the application process or~~
17 ~~implementation of the voluntary cleanup plan regarding releases or threatened releases of hazardous or~~
18 ~~deleterious substances within 10 days of discovery of that information.~~

19 (11) ~~Within 60 days after completion of the approved remediation proposal described in the voluntary~~
20 ~~cleanup plan approved by the department, the applicant shall provide to the department a certification from a~~
21 ~~qualified environmental professional that the plan has been fully implemented, including all documentation~~
22 ~~necessary to demonstrate the successful implementation of the plan, such as confirmation sampling, if~~
23 ~~necessary.~~

24 (12) ~~Except as provided in 75-10-738(2)(b), the department may not require financial assurance under~~
25 ~~this part for voluntary cleanup plans approved under this section.~~

26 (13) ~~If a person who would otherwise not be a liable person under 75-10-715(1) elects to undertake an~~
27 ~~approved voluntary cleanup plan, the person may not become a liable person under 75-10-715(1) by~~
28 ~~undertaking a voluntary cleanup if the person materially complies with the voluntary cleanup plan approved by~~

~~the department pursuant to this section.~~

~~(14) Immunity from liability under this section does not apply to a release that is caused by conduct that is negligent or grossly negligent or that constitutes intentional misconduct."~~

Section 110. ~~Section 75-10-1201, MCA, is amended to read:~~

~~**"75-10-1201. Definitions.** As used in this part, the following definitions apply:~~

~~(1) "Board" means the board of environmental review provided for in 2-15-3502.~~

~~(2)(1) "Department" means the department of environmental quality provided for in 2-15-3501.~~

~~(3)(2) "Disposal" means the discharge, injection, deposit, dumping, spilling, leaking, or placing of septage into or onto the land or water.~~

~~(4)(3) "Domestic sewage" means waste and wastewater from humans or household operations that are discharged to or otherwise enter a treatment works.~~

~~(5)(4) "Industrial wastewater" means wastewater generated in a commercial or industrial process.~~

~~(6)(5) "Person" means an individual, firm, partnership, association, corporation, city, town, local government entity, or other government or private entity, whether organized for profit or not.~~

~~(7)(6) (a) "Septage" means liquid or solid material removed from a septic tank, cesspool, portable toilet, or similar treatment works that receives only domestic sewage.~~

~~(b) Septage does not include material removed from a septic tank, cesspool, or similar treatment works that receives industrial wastewater and does not include grease removed from a grease trap at a restaurant.~~

~~(8)(7) "Treatment works" means a publicly owned or privately owned device or system used to treat, including to recycle and to reclaim, either domestic sewage or a combination of domestic sewage and industrial waste of a liquid nature."~~

Section 111. ~~Section 75-10-1221, MCA, is amended to read:~~

~~**"75-10-1221. Department revocation or denial of license.** The department may deny or revoke a license after giving the applicant written notice and an opportunity for a hearing before the board. The decision to deny or revoke a license may be made only after a finding that a business or disposal site cannot be~~

~~operated or is not being operated in compliance with this part or a rule or order issued pursuant to this part. The hearing held before the board on a denial or revocation must be held pursuant to the provisions of the Montana Administrative Procedure Act."~~

Section 112. ~~Section 75-10-1222, MCA, is amended to read:~~

~~"75-10-1222. Administrative enforcement. (1) If the department believes that a violation of this part, a rule adopted under this part, or an order issued under this part has occurred, it may serve written notice of the violation, by certified mail, on the alleged violator or the violator's agent. The notice must specify the provision of this part, the rule, or the condition of approval alleged to have been violated and the facts alleged to constitute a violation. The notice must include an order to take necessary corrective action within a reasonable period of time. The time period must be stated in the order. Service is complete on the date of mailing.~~

~~(2) If the alleged violator does not request a hearing before the board department within 30 days of the date of service, the order is final. Failure to comply with a final order may subject the violator to an action commenced pursuant to 75-10-1221.~~

~~(3) If the alleged violator requests a hearing before the board within 30 days of the date of service, the board department shall schedule a hearing. After the hearing is held, the board department may:~~

~~(a) affirm or modify the department's order issued under subsection (1) if the board department finds that a violation has occurred; or~~

~~(b) rescind the department's order if the board department finds that a violation has not occurred.~~

~~(4) An order issued by the department or the board may set a date by which the violation must cease and set a time limit for the violator to correct the violation.~~

~~(5) (a) An action initiated by the department under this section may include an administrative penalty not to exceed \$500 for each day of violation. Administrative penalties collected under this section must be deposited in the account provided for in 75-10-1203.~~

~~(b) Penalties assessed under this section must be determined in accordance with the penalty factors in 75-1-1001.~~

~~(6) The contested case provisions of the Montana Administrative Procedure Act, provided for in Title 2, chapter 4, part 6, apply to a hearing under this section."~~

1
2 **Section 113.** ~~Section 75-11-203, MCA, is amended to read:~~

3 ~~"75-11-203. Definitions. As used in this part, unless the context requires otherwise, the following~~
4 ~~definitions apply:~~

5 ~~(1) "Board" means the board of environmental review provided for in 2-15-3502.~~

6 ~~(2)(1) "Closure" or "to close" means the process of properly removing or filling in place an~~
7 ~~underground storage tank that is no longer in service.~~

8 ~~(3)(2) "Department" means the department of environmental quality provided for in 2-15-3501.~~

9 ~~(4)(3) "Inspection" means activities to inspect all or part of an underground storage tank system,~~
10 ~~including records relating to installation, operation, maintenance, and closure to determine compliance with~~
11 ~~applicable laws and rules relating to operation and maintenance.~~

12 ~~(5)(4) "Inspector" means an individual who performs inspections of underground storage tank~~
13 ~~systems.~~

14 ~~(6) (5) (a) "Installation" or "to install" means the placement of an underground storage tank system,~~
15 ~~including excavation, tank placement, backfilling, and piping of underground portions of the underground~~
16 ~~storage tank system that store or convey regulated substances. Installation includes repair or modification of an~~
17 ~~underground storage tank system through such means as tank relining or the repair or replacement of valves,~~
18 ~~fillpipes, piping, vents, or in-tank liquid level monitoring systems. Installation also means installation, repair, or~~
19 ~~modification of a leak detection device that is external to and not attached to the underground storage tank~~
20 ~~system and the installation, repair, or modification of a cathodic protection system.~~

21 ~~(b) The terms do not include the process of conducting a precision (tightness) test to establish the~~
22 ~~integrity of the underground storage tank system.~~

23 ~~(7)(6) "Installer" means an individual who installs or closes underground storage tank systems.~~

24 ~~(8) (7) "License" means a license issued by the department under 75-11-204 or 75-11-210 to conduct~~
25 ~~the inspection, installation, or closure of underground storage tank systems.~~

26 ~~(9)(8) "Licensed inspector" means an individual who holds a valid underground storage tank system~~
27 ~~inspector license.~~

28 ~~(10)(9) "Licensed installer" means an individual who holds a valid underground storage tank system~~

1 ~~installer license.~~

2 ~~(11)(10) "Operator" means a person in control of or having responsibility for the operation,~~
3 ~~maintenance, or management of an underground storage tank system.~~

4 ~~(12)(11) "Owner" means a person who owns an underground storage tank system used for the~~
5 ~~storage, use, or dispensing of regulated substances.~~

6 ~~(13)(12) "Person" means an individual, firm, trust, estate, partnership, company, association,~~
7 ~~corporation (whether organized for profit or not), city, town, local governmental entity, or any other~~
8 ~~governmental or private entity.~~

9 ~~(14)(13) "Regulated substance" means a regulated substance as defined in 75-11-503.~~

10 ~~(15)(14) "Underground storage tank" or "underground storage tank system" means an underground~~
11 ~~storage tank, as defined in 75-11-503, and, for purposes of this part, includes ancillary equipment designed to~~
12 ~~prevent, detect, or contain a release from an underground storage tank system."~~

13

14 **Section 114.** ~~Section 75-11-211, MCA, is amended to read:~~

15 ~~"75-11-211. Denial, modification, suspension, or revocation of installer or inspector license—~~
16 ~~grounds. (1) The department may deny, modify, condition, suspend, or revoke a license if the installer or~~
17 ~~inspector:~~

18 ~~(a) fails to achieve a passing grade on a written examination;~~

19 ~~(b) fails to pay the license fee imposed under this part;~~

20 ~~(c) commits fraud or deceit with respect to the license or permit application or an inspection report~~
21 ~~submitted to the department;~~

22 ~~(d) has had suspended or revoked:~~

23 ~~(i) a license issued under this part; or~~

24 ~~(ii) a similar license in another state or territory; or~~

25 ~~(e) violates any state or federal law, rule, permit, or order relating to the installation or closure of an~~
26 ~~underground storage tank system.~~

27 ~~(2) If the department modifies, conditions, suspends, or revokes a license, it shall inform the applicant~~
28 ~~or license holder in writing of the reason for the action. The applicant or license holder may request a hearing~~

~~before the board department. If the board department grants a hearing, the hearing must be held in accordance with the provisions of the Montana Administrative Procedure Act."~~

Section 115. ~~Section 75-11-218, MCA, is amended to read:~~

~~**"75-11-218. Administrative enforcement.** (1) When the department believes that a person has violated this part, a rule adopted under this part, or a permit provision, it may serve written notice of the violation on the person or the person's agent. The notice must specify the alleged violation and the facts that constitute the alleged violation. The notice may include an order to provide information pertaining to the installation, closure, or inspection, an order to take necessary corrective action within a reasonable time as stated in the order, or an order assessing an administrative penalty pursuant to 75-11-223. A notice and order must be signed by the director of the department or the director's designee and must be served personally or by certified mail upon the person or the person's agent. The order becomes final unless, within 30 days after the notice is served, the person requests in writing a hearing before the board department. On receipt of the request, the board department shall schedule a hearing. Service by mail is complete on the date of mailing.~~

~~(2) If, pursuant to a hearing held under subsection (1), the board department finds that a violation has occurred, it shall either affirm or modify the department's order. An order issued by the department or the board may prescribe the date by which the violation must cease and may prescribe time limits for particular action. If, after a hearing, the board department finds that a violation has not occurred, it shall rescind the department's order.~~

~~(3) In addition to or instead of issuing an order pursuant to subsection (1), the department may either:~~

~~(a) require the alleged violator to appear before the board department for a hearing at a time and place specified in the notice and answer the charges described in the notice of violation; or~~

~~(b) initiate action under 75-11-219, 75-11-223, or 75-11-224.~~

~~(4) This section does not prevent the board or department from attempting to obtain voluntary compliance through issuance of a warning, a conference, or any other appropriate administrative or judicial means.~~

~~(5) The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing held under this section."~~

1

2 **Section 116.** ~~Section 75-11-219, MCA, is amended to read:~~

3 ~~"75-11-219. Injunctions. The department may institute and maintain in the name of the state actions~~
4 ~~for injunctive relief as provided in Title 27, chapter 19, to:~~

5 ~~(1) immediately restrain any person from engaging in unauthorized activity that is endangering public~~
6 ~~health or causing damage to the environment;~~

7 ~~(2) enjoin a violation of this part, a rule adopted under this part, or an order of the department or the~~
8 ~~board; or~~

9 ~~(3) require compliance with this part, a rule adopted under this part, or an order of the department or~~
10 ~~the board."~~

11

12 **Section 117.** ~~Section 75-11-223, MCA, is amended to read:~~

13 ~~"75-11-223. Civil and administrative penalties. (1) (a) A person who violates a provision of this part,~~
14 ~~a rule adopted under this part, or an order of the department or the board is subject to an administrative penalty~~
15 ~~not to exceed \$500 for each violation or a civil penalty not to exceed \$10,000 for each violation. If an installer or~~
16 ~~an inspector who is an employee is in violation, the employer of that installer or that inspector is the entity that~~
17 ~~is subject to the provisions of this section unless the violation is the result of a grossly negligent or willful act.~~
18 ~~Each day of violation of this part, a rule adopted under this part, or an order constitutes a separate violation.~~

19 ~~(b) Penalties assessed under this subsection (1) must be determined in accordance with the penalty~~
20 ~~factors in 75-1-1001.~~

21 ~~(2) The department may institute and maintain in the name of the state any enforcement proceedings~~
22 ~~under this section. The enforcement or collection action must be brought in the district court of the county in~~
23 ~~which the violation occurred or, if mutually agreed upon by the parties, in the district court of the first judicial~~
24 ~~district, Lewis and Clark County. Upon request of the department, the attorney general or the county attorney of~~
25 ~~the county where the violation occurred shall petition the district court to impose, assess, and recover the civil~~
26 ~~penalty.~~

27 ~~(3) Action under this section does not bar:~~

28 ~~(a) enforcement of this part, rules adopted under this part, orders of the department or the board, or~~

~~terms of a license or permit by injunction or other appropriate remedy; or~~

~~(b) — action under 75-11-224."~~

Section 118. ~~Section 75-11-224, MCA, is amended to read:~~

~~**"75-11-224. Criminal penalties.** (1) Any owner or operator who knowingly installs or closes an underground storage tank system without a permit and either an inspection or the use of the services of a licensed installer as required in 75-11-209; any installer who knowingly installs or closes an underground storage tank system without being licensed; or any person who knowingly makes any false statements or representations in any application, permit, report, licensing form, or other document filed or maintained as required by this part or required by rules adopted under this part is subject to a fine not to exceed \$10,000 for each violation or imprisonment not to exceed 6 months, or both. Each day of violation constitutes a separate violation.~~

~~(2) — A person convicted of a second or subsequent criminal violation is subject to a fine not to exceed \$20,000 for each violation or imprisonment not to exceed 1 year, or both. Each day of violation constitutes a separate violation.~~

~~(3) — Action under this section does not bar enforcement of this part, rules adopted under this part, orders of the department or the board, or terms of a license or permit by injunction or other appropriate remedy."~~

Section 119. ~~Section 75-11-503, MCA, is amended to read:~~

~~**"75-11-503. Definitions.** Unless the context requires otherwise, in this part, the following definitions apply:~~

~~(1) — "Board" means the board of environmental review provided for in 2-15-3502.~~

~~(2)(1) — "Department" means the department of environmental quality provided for in 2-15-3501.~~

~~(3)(2) — "Dispose" or "disposal" means the discharge, injection, deposit, dumping, spilling, leaking, or placing of any regulated substance into or onto the land or water so that the regulated substance or any constituent of the regulated substance may enter the environment or be emitted into the air or discharged into any waters, including ground water.~~

~~(4)(3) "Person" means the United States, an individual, firm, trust, estate, partnership, company, association, corporation, city, town, local governmental entity, or any other governmental or private entity, whether organized for profit or not.~~

~~(5)(4) "Petroleum mixing zone" means an area where water quality standards for petroleum and petroleum constituents may be exceeded subject to the conditions of 75-11-508 and consistent with rules adopted under 75-11-318, 75-11-319, and 75-11-505.~~

~~(6)(5) "Regulated substance":~~

~~(a) means:~~

~~(i) a hazardous substance as defined in 75-10-602; or~~

~~(ii) petroleum, including crude oil or any fraction of crude oil, that is liquid at standard conditions of temperature and pressure (60 degrees F and 14.7 pounds per square inch absolute);~~

~~(b) does not include a substance regulated as a hazardous waste under Title 75, chapter 10, part 4.~~

~~(7)(6) "Storage" means the actual or intended containment of regulated substances, either on a temporary basis or for a period of years.~~

~~(8)(7) "Underground storage tank" or "tank":~~

~~(a) means, except as provided in subsections (8)(b)(i) through (8)(b)(xii) subsection (7)(b):~~

~~(i) any one or a combination of tanks used to contain a regulated substance, the volume of which is 10% or more beneath the surface of the ground;~~

~~(ii) any underground pipes used to contain or transport a regulated substance and connected to a storage tank, whether the storage tank is entirely above ground, partially above ground, or entirely under ground; and~~

~~(iii) ancillary equipment designed to prevent, detect, or contain a release from an underground storage tank;~~

~~(b) does not include:~~

~~(i) a farm or residential tank that was installed as of April 27, 1995, that has a capacity of 1,100 gallons or less and that is used for storing motor fuel for noncommercial purposes;~~

~~(ii) a farm or residential tank that was installed as of April 27, 1995, that has a capacity of 1,100 gallons or less and that is used for storing heating oil for consumptive use on the premises where it is stored;~~

~~(iii) farm or residential underground pipes that were installed as of April 27, 1995, and that are used to contain or to transport motor fuels for noncommercial purposes or heating oil for consumptive use on the premises where it is stored from an aboveground storage tank with a capacity of 1,100 gallons or less;~~

~~(iv) a septic tank;~~

~~(v) a pipeline facility, including gathering lines, regulated under:~~

~~(A) the Natural Gas Pipeline Safety Act of 1968, 49 U.S.C. 1671, et seq.;~~

~~(B) the Hazardous Liquid Pipeline Safety Act of 1979, 49 U.S.C. 2001, et seq.; or~~

~~(C) state law comparable to the provisions of law referred to in subsection (8)(b)(v)(A) or (8)(b)(v)(B);~~

~~(7)(b)(v)(A) or (7)(b)(v)(B) if the facility is intrastate;~~

~~(vi) a surface impoundment, pit, pond, or lagoon;~~

~~(vii) a storm water or wastewater collection system;~~

~~(viii) a flow-through process tank;~~

~~(ix) a liquid trap or associated gathering lines directly related to oil or gas production and gathering operations;~~

~~(x) a storage tank situated in an underground area, such as a basement, cellar, mine, draft, shaft, or tunnel, if the storage tank is situated upon or above the surface of the floor;~~

~~(xi) any pipe connected to a tank described in subsections (8)(b)(i) through (8)(b)(ix);~~

~~(7)(b)(i) through (7)(b)(ix); or~~

~~(xii) underground pipes connected to an aboveground storage tank at a petroleum refinery that is subject to:~~

~~(A) facilitywide corrective action permit provisions under 75-10-406 or the federal Resource Conservation and Recovery Act of 1976, 42 U.S.C. 6901 through 6987, as amended; or~~

~~(B) a facilitywide corrective action order under 75-10-425 or the federal Resource Conservation and Recovery Act of 1976, 42 U.S.C. 6901 through 6987, as amended."~~

Section 120. Section 75-11-505, MCA, is amended to read:

"75-11-505. Administrative rules -- underground storage tanks -- petroleum mixing zones. (1)

The department may adopt, amend, or repeal rules for the prevention and correction of leakage from

underground storage tanks, including:

- (a) reporting by owners and operators;
- (b) financial responsibility;
- (c) release detection, prevention, and corrective action;
- (d) procedures and standards for the issuance, nonissuance, renewal, nonrenewal, modification, revocation, suspension, and enforcement of permits authorizing the operation of underground storage tanks;

(e) standards for design, construction, installation, and closure;

(f) development of a schedule of annual fees, not to exceed \$108 for a tank over 1,100 gallons and not to exceed \$36 for a tank 1,100 gallons or less, for each tank, for tank registration to defray state and local costs of implementing an underground storage tank program. The department may prorate fees to cover periods not equal to 12 months in order to provide staggered scheduling of renewal dates.

(g) a system for assessment of administrative penalties, notice, and appeals under 75-11-525; and

(h) delegation of authority and funds to local agents for inspections and implementation. The delegation of authority to local agents must complement and may not duplicate existing authority for implementation of rules adopted by the department of justice that relate to underground storage tanks.

(2) In accordance with 75-11-508, the department:

(a) shall adopt rules governing the inclusion of a petroleum mixing zone, as defined in 75-11-503, in a corrective action plan; and

(b) may incorporate by reference rules adopted by the board of environmental review pursuant to 75-5-301 and 75-5-303 related to mixing zones for ground water."

Section 121. Section 75-11-508, MCA, is amended to read:

"75-11-508. Corrective action -- petroleum mixing zones. (1) A corrective action plan prepared pursuant to 75-11-309 may include the use of a petroleum mixing zone, as defined in 75-11-503, in conjunction with the final remediation and resolution of a petroleum release.

(2) If a petroleum mixing zone is included in a corrective action plan, it may be established only when:

(a) all source material has been removed to the maximum extent practicable;

(b) the extent of petroleum contamination has been defined;

1 (c) natural breakdown or attenuation is occurring within the plume; and

2 (d) no further corrective action is reasonably required at the site.

3 (3) The boundary of a petroleum mixing zone established in accordance with this section must be
4 contained within the boundary of the property on which the petroleum release originated unless a recorded
5 easement, a restrictive covenant, or another institutional control approved by the department on an adjoining
6 property allows the petroleum mixing zone to extend onto the adjoining property.

7 (4) Monitoring of a petroleum mixing zone may not be required unless there is a unique, overriding,
8 site-specific, impact-related reason to require monitoring.

9 (5) At the downgradient boundary of a petroleum mixing zone, the concentration of any petroleum
10 constituent, including benzene, may not exceed a water quality standard adopted by the board pursuant to 75-
11 5-301.

12 (6) If a petroleum mixing zone is established and maintained:

13 (a) the petroleum release is considered ~~to be~~ resolved;

14 (b) no further corrective action for the petroleum release is required; and

15 (c) the department shall issue a no-further-action letter to the owner or operator stating that a
16 petroleum mixing zone has been established for the release and describing any conditions required to maintain
17 the petroleum mixing zone.

18 (7) A corrective action plan approved by the department pursuant to 75-11-309 may be amended to
19 include a petroleum mixing zone in accordance with this section, including a corrective action plan approved
20 prior to April 15, 2011."

21

22 **Section 122.** ~~Section 75-11-509, MCA, is amended to read:~~

23 ~~"75-11-509. Inspections -- permits. (1) The owner or operator of an active underground storage tank~~
24 ~~must have the tank inspected for compliance with this part by January 1, 2002, and at least once every 3 years~~
25 ~~thereafter by an inspector who is licensed pursuant to Title 75, chapter 11, part 2, to perform underground~~
26 ~~storage tank inspections. The inspector may not be:~~

27 ~~(a) the owner or operator of the tank;~~

28 ~~(b) an employee of the owner or operator; or~~

~~(c) for the first inspection required by this subsection (1) and for a period of 3 years after the installation or modification of the tank was completed, the installer who installed or modified the tank and whose name or signature was on the permit required by 75-11-212.~~

~~(2) The owner or operator of an inactive underground storage tank shall comply with requirements for testing, inspection, recordkeeping, and reporting provided in rules adopted pursuant to this part.~~

~~(3) The department may by rule authorize temporary permits for the installation, testing, and operation of underground storage tanks. The requirements in subsection (8) for a 3-year permit term and for permit issuance only after inspection by a licensed inspector do not apply to temporary permits.~~

~~(4) The department shall by rule provide:~~

~~(a) requirements for the scope and timing of inspections; and~~

~~(b) requirements for testing, inspection, recordkeeping, and reporting for inactive tanks to ensure that these tanks do not pose a threat to public health, safety, or the environment while inactive or upon their return to active status.~~

~~(5) The inspector shall provide the owner or operator with an inspection report that meets the requirements of rules adopted by the department to ensure compliance with this part and rules adopted pursuant to this part.~~

~~(6) The owner or operator shall retain the original inspection report and mail a copy to the department.~~

~~(7) If the inspection report indicates violations, the owner or operator shall correct the violations and obtain a followup inspection. Followup inspection reports must be provided to the owner or operator and to the department.~~

~~(8) A person may not place a regulated substance in an underground storage tank unless the owner or operator has been issued a valid permit from the department for the tank. Permits must be issued for a term of 3 years. The department may not issue or renew a permit unless the owner or operator has filed with the department an inspection report by a licensed inspector. Prior to issuing or renewing a permit, the department shall determine, on the basis of the inspection report and other relevant information, whether the operation and maintenance of the tank were in compliance with this part and rules adopted pursuant to this part on the date of inspection.~~

~~(9) The department may determine to not issue or not renew a permit for a tank if the department~~

~~finds that there has been significant noncompliance with this part or with rules, permits, or orders issued pursuant to this part. If the department proposes to not issue or not renew a permit, it must have a written notice letter served personally or by certified mail on the owner or operator informing the owner or operator of the reason for the action. The owner or operator may request a hearing before the board department. The hearing request must be in writing and must be filed with the board no later than 30 days after the service of the notice letter. The contested case provisions of the Montana Administrative Procedure Act, provided for in Title 2, chapter 4, part 6, apply to a hearing conducted under this section."~~

Section 123. ~~Section 75-11-512, MCA, is amended to read:~~

~~"75-11-512. Administrative enforcement. (1) When the department believes that a violation of this part or a rule adopted under this part has occurred, it may serve written notice of the violation personally or by certified mail on the alleged violator or the violator's agent. The notice must specify the provision of this part or the rule alleged to be violated and the facts alleged to constitute a violation and may include an order to take necessary corrective action within a reasonable period of time stated in the order. The order becomes final unless, within 30 days after the notice is served, the person named requests, in writing, a hearing before the board department. On receipt of the request, the board department shall schedule a hearing. Service by mail is complete on the date of receipt.~~

~~(2) If, after a hearing held under subsection (1), the board department finds that a violation has occurred, it shall either affirm or modify the department's order. An order issued by the department or by the board may prescribe the date by which the violation must cease and may prescribe time limits for particular action. If, after hearing, the board department finds that a violation has not occurred, it shall rescind the department's order.~~

~~(3) In addition to or instead of issuing an order pursuant to subsection (1), the department may:~~

~~(a) require the alleged violator to appear before the board or department, by subpoena or subpoena duces tecum, for a hearing at a time and place specified in the notice to answer the charges complained of or to provide information regarding the alleged violation or its actual or potential impact on the public health and welfare or the environment;~~

~~(b) initiate action under 75-11-513, 75-11-514, or 75-11-516; or~~

~~(c) — assess administrative penalties and issue corrective action orders under 75-11-525.~~

~~(4) — In the case of disobedience of any subpoena issued and served under this section or of the refusal of any witness to testify as to any material matter with regard to which the witness may be interrogated in a hearing or investigation before the board or the department, the board or department may apply to any district court in the state for an order to compel compliance with the subpoena or the giving of testimony. The court shall hear the matter as expeditiously as possible. If the disobedience or refusal is found to be unjustified, the court shall enter an order requiring compliance. Disobedience of the order is punishable by contempt of court in the same manner and by the same procedures as is provided for like conduct committed in the course of civil actions in district court.~~

~~(5) — If a person fails to comply with an order issued pursuant to subsection (1) or (3) within the time allowed in the order, the department may enter the property on which the underground storage tank that is in violation is located and temporarily close the tank. If the department finds that permanent closure is necessary to prevent substantial environmental harm or because the owner or operator is unlikely to comply with the order, it may permanently close the tank.~~

~~(6) — This section does not prevent the board or department from making efforts to obtain voluntary compliance through warning, conference, or any other appropriate means."~~

Section 124. ~~Section 75-11-513, MCA, is amended to read:~~

~~"75-11-513. — Injunctions. The department may institute and maintain, in the name of the state, actions for injunctive relief as provided in Title 27, chapter 19, to:~~

~~(1) — immediately restrain any person from engaging in any unauthorized activity that is endangering or causing damage to the public health or to the environment;~~

~~(2) — enjoin a violation of this part, a rule adopted under this part, or an order of the department or the board; or~~

~~(3) — require compliance with this part, a rule adopted under this part, or an order of the department or the board."~~

Section 125. ~~Section 75-11-516, MCA, is amended to read:~~

~~"75-11-516.— Civil penalties. (1) (a) A person who violates any provision of this part, a rule adopted under this part, or an order of the department or the board is subject to a civil penalty not to exceed \$10,000 for each violation. Each day of violation constitutes a separate violation.~~

~~(b) Penalties assessed under this subsection (1) must be determined in accordance with the penalty factors in 75-1-1001.~~

~~(2) The department may institute and maintain in the name of the state any enforcement proceedings under this section. Upon request of the department, the attorney general or the county attorney of the county of violation shall petition the district court to impose, assess, and recover the civil penalty. Penalties are also recoverable in an action brought by the department. The action must be brought in the district court of the county in which the violation occurred or, if mutually agreed on by the parties in the action, in the district court of the first judicial district, Lewis and Clark County.~~

~~(3) Action under this section does not bar enforcement of this part, rules adopted under this part, or orders of the department or the board.~~

~~(4) Money collected under this section must be deposited in the state general fund."~~

Section 126. ~~Section 75-11-525, MCA, is amended to read:~~

~~"75-11-525.— Administrative penalties for violations — appeals — venue. (1) (a) A person who violates any of the provisions of this part or any rules promulgated under the authority of this part may be assessed and ordered by the department to pay an administrative penalty not to exceed \$500 for each violation. This limitation on administrative penalties applies only to penalties assessed under this section. Each occurrence of the violation and each day that it remains uncorrected constitutes a separate violation. The department may suspend a portion of the administrative penalty assessed under this section if the condition that caused the assessment of the penalty is corrected within a specified time. Assessment of an administrative penalty under this section may be made in conjunction with any order or other administrative action authorized by this chapter.~~

~~(b) Penalties assessed under this subsection (1) must be determined in accordance with the penalty factors in 75-1-1001.~~

~~(2) When the department assesses an administrative penalty under this section, it must have written~~

~~notice served personally or by certified mail on the alleged violator or the violator's agent. For purposes of this chapter, service by mail is complete on the day of receipt. The notice must state:~~

~~(a) the provision alleged to be violated;~~

~~(b) the facts alleged to constitute the violation;~~

~~(c) the amount of the administrative penalty assessed under this section;~~

~~(d) the amount, if any, of the penalty to be suspended upon correction of the condition that caused the assessment of the penalty;~~

~~(e) the nature of any corrective action that the department requires, whether or not a portion of the penalty is to be suspended;~~

~~(f) as applicable, the time within which the corrective action is to be taken and the time within which the administrative penalty is to be paid; and~~

~~(g) the right to appeal or to a hearing to mitigate the penalty assessed.~~

~~(3) A person assessed a penalty under this section may request a hearing before the board department to either contest the alleged violation or request mitigation of the penalty. The contested case provisions of the Montana Administrative Procedure Act, provided for in Title 2, chapter 4, part 6, apply to a hearing conducted under this section. If a hearing is held under this section, it must be held in Lewis and Clark County or the county in which the alleged violation occurred.~~

~~(4) If the department is unable to collect an administrative penalty assessed under this section or if a person fails to pay all or any portion of an administrative penalty assessed under this section, the department may take action in district court to recover the penalty amount and any additional amounts assessed or sought under this chapter. The action must be brought in the district court of the county in which the violation occurred or, if mutually agreed on by the parties in the action, in the district court of the first judicial district, Lewis and Clark County.~~

~~(5) Action under this section does not bar action under this chapter or any other remedy available to the department for violations of underground storage tank laws or rules promulgated under those laws.~~

~~(6) Administrative penalties collected under this section must be deposited in the state general fund."~~

Section 127. ~~Section 75-20-104, MCA, is amended to read:~~

1 ~~"75-20-104. Definitions.~~ In this chapter, unless the context requires otherwise, the following
2 ~~definitions apply:~~

3 ~~(1) "Addition thereto" means the installation of new machinery and equipment that would significantly~~
4 ~~change the conditions under which the facility is operated.~~

5 ~~(2) "Application" means an application for a certificate submitted in accordance with this chapter and~~
6 ~~the rules adopted under this chapter.~~

7 ~~(3) (a) "Associated facilities" includes but is not limited to transportation links of any kind, aqueducts,~~
8 ~~diversion dams, pipelines, storage ponds, reservoirs, and any other device or equipment associated with the~~
9 ~~delivery of the energy form or product produced by a facility.~~

10 ~~(b) The term does not include a transmission substation, a switchyard, voltage support, or other~~
11 ~~control equipment or a facility or a natural gas or crude oil gathering line 25 inches or less in inside diameter.~~

12 ~~(4) "Board" means the board of environmental review provided for in 2-15-3502.~~

13 ~~(5)(4) "Certificate" means the certificate of compliance issued by the department under this chapter~~
14 ~~that is required for the construction or operation of a facility.~~

15 ~~(6)(5) "Commence to construct" means:~~

16 ~~(a) any clearing of land, excavation, construction, or other action that would affect the environment of~~
17 ~~the site or route of a facility but does not mean changes needed for temporary use of sites or routes for~~
18 ~~nonutility purposes or uses in securing geological data, including necessary borings to ascertain foundation~~
19 ~~conditions;~~

20 ~~(b) the fracturing of underground formations by any means if the activity is related to the possible~~
21 ~~future development of a gasification facility or a facility employing geothermal resources but does not include~~
22 ~~the gathering of geological data by boring of test holes or other underground exploration, investigation, or~~
23 ~~experimentation;~~

24 ~~(c) the commencement of eminent domain proceedings under Title 70, chapter 30, for land or rights-~~
25 ~~of-way upon or over which a facility may be constructed;~~

26 ~~(d) the relocation or upgrading of an existing facility defined by subsection (9)(a) or (9)(b) (8)(a) or~~
27 ~~(8)(b), including upgrading to a design capacity covered by subsection (9)(a), (8)(a), except that the term does~~
28 ~~not include normal maintenance or repair of an existing facility.~~

~~(7)(6) (a) "Commencement of acquisition of right-of-way" means the actual, defined legal transfer of property.~~

~~(b) The term does not mean preliminary discussions, option agreements that are not within 60 days of commencement of acquisition, letters of intent, or other documents that do not conclusively result in the legal transfer of property.~~

~~(8)(7) "Department" means the department of environmental quality provided for in 2-15-3501.~~

~~(9)(8) "Facility" means, subject to 75-20-1202:~~

~~(a) each electric transmission line and associated facilities of a design capacity of more than 69 kilovolts, except that the term:~~

~~(i) does not include an electric transmission line and associated facilities of a design capacity of 230 kilovolts or less and 10 miles or less in length;~~

~~(ii) does not include an electric transmission line with a design capacity of more than 69 kilovolts for which the person planning to construct the line has obtained right-of-way agreements or options for a right-of-way from more than 75% of the owners who collectively own more than 75% of the property along the centerline;~~

~~(iii) does not include electric transmission lines that are collectively less than 150 miles in length and are required under state or federal regulations and laws, with respect to reliability of service, for an electrical generation facility, as defined in 15-24-3001(4), or a wind generation facility, biomass generation facility, or energy storage facility, as defined in 15-6-157, to interconnect to a regional transmission grid or secure firm transmission service to use the grid for which the person planning to construct the line or lines has obtained right-of-way agreements or options for a right-of-way from more than 75% of the owners who collectively own more than 75% of the property along the centerline or centerlines;~~

~~(iv) does not include an upgrade to an existing transmission line of a design capacity of 50 kilovolts or more to increase that line's capacity, including construction outside the existing easement or right-of-way. Except for a newly acquired easement or right-of-way necessary to comply with electromagnetic field standards, a newly acquired easement or right-of-way outside the existing easement or right-of-way as described in this subsection (9)(a)(iv) (8)(a)(iv) may not exceed a total of 10 miles in length or be more than 10% of the existing transmission right-of-way, whichever is greater, and the purpose of the easement must be~~

~~to avoid sensitive areas or inhabited areas or conform to state or federal safety, reliability, and operational standards designed to safeguard the transmission network and protect electrical workers and the public.~~

~~(v) does not include a transmission substation, a switchyard, voltage support, or other control equipment;~~

~~(vi) does not include an energy storage facility, as defined in 15-6-157;~~

~~(b) (i) each pipeline, whether partially or wholly within the state, greater than 25 inches in inside diameter and 50 miles in length, and associated facilities, except that the term does not include:~~

~~(A) a pipeline within the boundaries of the state that is used exclusively for the irrigation of agricultural crops or for drinking water; or~~

~~(B) a pipeline greater than 25 inches in inside diameter and 50 miles in length for which the person planning to construct the pipeline has obtained right-of-way agreements or options for a right-of-way from more than 75% of the owners who collectively own more than 75% of the property along the centerline;~~

~~(ii) each pipeline, whether partially or wholly within the state, greater than 17 inches in inside diameter and 30 miles in length, and associated facilities used to transport coal suspended in water;~~

~~(c) any use of geothermal resources, including the use of underground space in existence or to be created, for the creation, use, or conversion of energy, designed for or capable of producing geothermally derived power equivalent to 50 megawatts or more or any addition thereto, except pollution control facilities approved by the department and added to an existing plant, except that the term does not include a compressed air energy storage facility, as defined in 15-6-157; or~~

~~(d) for the purposes of 75-20-204 only, a plant, unit, or other facility capable of generating 50 megawatts of hydroelectric power or more or any addition thereto.~~

~~(10)(9) "Person" means any individual, group, firm, partnership, corporation, limited liability company, cooperative, association, government subdivision, government agency, local government, or other organization or entity.~~

~~(11)(10) "Sensitive areas" means government-designated areas that have been recognized for their importance to Montana's wildlife, wilderness, culture, and historic heritage, including but not limited to national wildlife refuges, state wildlife management areas, federal areas of critical environmental concern, state parks and historic sites, designated wilderness areas, wilderness study areas, designated wild and scenic rivers, or~~

1 ~~national parks, monuments, or historic sites.~~

2 ~~(12)(11) "Transmission substation" means any structure, device, or equipment assemblage, commonly~~
3 ~~located and designed for voltage regulation, circuit protection, or switching necessary for the construction or~~
4 ~~operation of a proposed transmission line.~~

5 ~~(13)(12) "Transmission reliability agencies" means the federal energy regulatory commission, the~~
6 ~~western electricity coordinating council, the national electric reliability council, and the midwest reliability~~
7 ~~organization.~~

8 ~~(14)(13) "Upgrade" means to increase the electrical carrying capacity of a transmission line by actions~~
9 ~~including but not limited to:~~

10 ~~(a) installing larger conductors;~~

11 ~~(b) replacing insulators;~~

12 ~~(c) replacing pole or tower structures;~~

13 ~~(d) changing structure spacing, design, or guying; or~~

14 ~~(e) installing additional circuits.~~

15 ~~(15)(14) "Utility" means any person engaged in any aspect of the production, storage, sale, delivery, or~~
16 ~~furnishing of heat, electricity, gas, hydrocarbon products, or energy in any form for ultimate public use."~~

17

18 **Section 128.** Section 75-20-105, MCA, is amended to read:

19 **"75-20-105. Adoption of rules.** The ~~board~~ department may adopt rules implementing the provisions
20 of this chapter."

21

22 **Section 129.** ~~Section 75-20-201, MCA, is amended to read:~~

23 ~~"75-20-201. Certificate required -- operation in conformance -- certificate for nuclear facility --~~

24 ~~applicability to federal facilities. (1) Except for a facility under diligent onsite physical construction or in~~
25 ~~operation on January 1, 1973, a person may not commence to construct a facility in the state without first~~
26 ~~applying for and obtaining a certificate of compliance issued with respect to the facility by the department.~~

27 ~~(2) A facility with respect to which a certificate is issued may not be constructed, operated, or~~
28 ~~maintained except in conformity with the certificate and any terms, conditions, and modifications contained~~

~~within the certification.~~

~~(3)—A certificate may only be issued pursuant to this chapter.~~

~~(4)—If the department decides to issue a certificate for a nuclear facility, it shall report the recommendation to the applicant and may not issue the certificate until the recommendation is approved by a majority of the voters in a statewide election called by initiative or referendum according to the laws of this state.~~

~~(5)—A person that proposes to construct an energy-related project that is not defined as a facility pursuant to 75-20-104(9) 75-20-104(8) may petition the department to review the energy-related project under the provisions of this chapter. The construction or installation of an energy storage facility, as defined in 15-6-157, is not considered an energy-related project under the provisions of this chapter. A certificate for the construction or installation of an energy storage facility is not required under this chapter.~~

~~(6)—This chapter applies, to the fullest extent allowed by federal law, to all federal facilities and to all facilities over which an agency of the federal government has jurisdiction.~~

~~(7)—All judicial challenges of certificates for projects with a project cost, as determined by the court, of more than \$1 million must have precedence over any civil cause of a different nature pending in that court. If the court determines that the challenge was without merit or was for an improper purpose, such as to harass, to cause unnecessary delay, or to impose needless or increased cost in litigation, the court may award attorney fees and costs incurred in defending the action."~~

Section 130. ~~Section 75-20-207, MCA, is amended to read:~~

~~"**75-20-207.—Notice requirement for certain electric transmission lines.** Whenever a person plans to construct an electric transmission line or associated facilities under the provisions of 75-20-104(9)(a)(ii) 75-20-104(8)(a)(ii), it must provide public notice to persons residing in the area in which any portion of the electric transmission facility may be located and to the department. This notice must be made no less than 60 days prior to the commencement of acquisition of right-of-way as defined in 75-20-104 by publication of a summary describing the transmission facility and the proposed location of the facility in those newspapers that will substantially inform those persons of the construction and by mailing a summary to the department. The notice must inform the property owners of their rights under this chapter concerning the location of the facility and that~~

more information concerning their rights may be obtained from the department."

Section 131. ~~Section 75-20-208, MCA, is amended to read:~~

~~"75-20-208. Certain electric transmission lines -- verification of requirements. (1) Prior to constructing a transmission line under 75-20-104(9)(a)(ii) 75-20-104(8)(a)(ii), the person planning to construct the line shall provide to the department within 36 months of the date of the public notice provided under 75-20-207, unless extended by the department for good cause:~~

~~(a) copies of the right-of-way agreements or options for a right-of-way containing sufficient information to establish landowner consent to construct the line; and~~

~~(b) sufficient information for the department to verify that the requirements of 75-20-104(9)(a)(ii) 75-20-104(8)(a)(ii) are satisfied.~~

~~(2) The provisions of 75-20-104(9)(a)(ii) 75-20-104(8)(a)(ii) do not apply to any facility for which public notice under 75-20-207 has been given but for which the requirements of subsection (1) of this section have not been complied with."~~

Section 132. ~~Section 75-20-211, MCA, is amended to read:~~

~~"75-20-211. Application -- filing and contents -- proof of service and notice. (1) (a) An applicant shall file with the department an application for a certificate under this chapter and for the permits required under the laws administered by the department in the form that is required under applicable rules, containing the following information:~~

~~(i) a description of the proposed location and of the facility to be built;~~

~~(ii) a summary of any preexisting studies that have been made of the impact of the facility;~~

~~(iii) for facilities defined in 75-20-104(9)(a) and (9)(b) 75-20-104(8)(a) and (8)(b), a statement explaining the need for the facility, a description of reasonable alternate locations for the facility, a general description of the comparative merits and detriments of each location submitted, and a statement of the reasons why the proposed location is best suited for the facility;~~

~~(iv) (A) for facilities as defined in 75-20-104(9)(a) and (9)(b) 75-20-104(8)(a) and (8)(b), baseline data for the primary and reasonable alternate locations; or~~

~~(B) for facilities as defined in 75-20-104(9)(c), 75-20-104(8)(c), baseline data for the proposed location and, at the applicant's option, any alternative locations acceptable to the applicant for siting the facility;~~

~~(v) at the applicant's option, an environmental study plan to satisfy the requirements of this chapter;~~

~~and~~

~~(vi) other information that the applicant considers relevant or that the department by order or rule may require.~~

~~(b) If a copy or copies of the studies referred to in subsection (1)(a)(ii) are filed with the department, the copy or copies must be available for public inspection.~~

~~(2) An application may consist of an application for two or more facilities in combination that are physically and directly attached to each other and are operationally a single operating entity.~~

~~(3) The copy of the application must be accompanied by a notice specifying the date on or about which the application is to be filed.~~

~~(4) An application must also be accompanied by proof that public notice of the application was given to persons residing in the county in which any portion of the proposed facility is proposed or is alternatively proposed to be located, by publication of a summary of the application in those newspapers that will substantially inform those persons of the application."~~

Section 133. Section 75-20-215, MCA, is amended to read:

~~"75-20-215. Filing fee -- accountability -- refund -- use. (1) (a) A filing fee must be deposited in the state special revenue fund for the use of the department in administering Title 75, chapter 1, and this chapter. The applicant shall pay to the department a filing fee as provided in this section based upon the department's estimated costs of processing the application under this chapter. The fee may not exceed the following scale based upon the estimated cost of the facility:~~

- ~~(i) 6% of any estimated cost up to \$1 million; plus~~
- ~~(ii) 1% of any estimated cost over \$1 million and up to \$5 million; plus~~
- ~~(iii) 0.8% of any estimated cost over \$5 million and up to \$10 million; plus~~
- ~~(iv) 0.5% of any estimated cost over \$10 million and up to \$20 million; plus~~
- ~~(v) 0.25% of any estimated cost over \$20 million and up to \$100 million; plus~~

~~(vi) 0.125% of any estimated cost over \$100 million and up to \$500 million; plus~~

~~(vii) 0.05% of any estimated cost over \$500 million and up to \$1 billion; plus~~

~~(viii) 0.025% of any estimated cost over \$1 billion.~~

~~(b) The department may allow in its discretion a credit against the fee payable under this section for the development of information or providing of services required under this chapter or required for preparation of an environmental impact statement or assessment under the Montana or national environmental policy acts. The applicant may submit the information to the department, together with an accounting of the expenses incurred in preparing the information. The department shall evaluate the applicability, validity, and usefulness of the data and determine the amount that may be credited against the filing fee payable under this section. Upon 30 days' notice to the applicant, this credit may at any time be reduced if the department determines that it is necessary to carry out its responsibilities under this chapter.~~

~~(2) (a) The department may contract with an applicant for the development of information, provision of services, and payment of fees required under this chapter. The contract may continue an agreement entered into pursuant to 75-20-106. Payments made to the department under a contract must be credited against the fee payable pursuant to this section. Notwithstanding the provisions of this section, the revenue derived from the filing fee must be sufficient to enable the department, the board, and the agencies listed in 75-20-216(6) to carry out their responsibilities under this chapter. The department may amend a contract to require additional payments for necessary expenses up to the limits set forth in subsection (1)(a) upon 30 days' notice to the applicant. The department and applicant may enter into a contract that exceeds the scale provided in subsection (1)(a).~~

~~(b) If a contract is not entered into, the applicant shall pay the filing fee in installments in accordance with a schedule of installments developed by the department, provided that an installment may not exceed 20% of the total filing fee provided for in subsection (1).~~

~~(3) The estimated cost of upgrading an existing transmission substation may not be included in the estimated cost of a proposed facility for the purpose of calculating a filing fee.~~

~~(4) If an application consists of a combination of two or more facilities, the filing fee must be based on the total estimated cost of the combined facilities.~~

~~(5) The applicant is entitled to an accounting of money expended and to a refund with interest at the~~

~~rate of 6% a year of that portion of the filing fee not expended by the department in carrying out its responsibilities under this chapter. A refund must be made after all administrative and judicial remedies have been exhausted by all parties to the certification proceedings.~~

~~(6) The revenue derived from filing fees must be used by the department in compiling the information required for rendering a decision on a certificate and for carrying out its and the board's other responsibilities under this chapter."~~

Section 134. Section 75-20-216, MCA, is amended to read:

"75-20-216. Study, evaluation, and report on proposed facility -- assistance by other agencies.

(1) After receipt of an application, the department shall within 30 days notify the applicant in writing that:

- (a) the application is in compliance and is accepted as complete; or
- (b) the application is not in compliance and shall list the deficiencies. Upon correction of these deficiencies and resubmission by the applicant, the department shall within 15 days notify the applicant in writing that the application is in compliance and is accepted as complete.

(2) Upon receipt of an application complying with 75-20-211 through 75-20-213, 75-20-215, and this section, the department shall:

- (a) commence an evaluation of the proposed facility and its effects, considering all applicable criteria listed in 75-20-301, and shall issue a decision, opinion, order, certification, or permit as provided in subsection (3);

- (b) use, to the extent that it considers applicable, valid and useful existing studies and reports submitted by the applicant or compiled by a state or federal agency; and

- (c) if a modification of a proposed facility is needed as determined by the department, consult with the applicant. The proposed modification must be analyzed in the environmental review document prepared under Title 75, chapter 1, parts 1 through 3.

(3) Except as provided in 75-1-205(4), 75-1-208(4)(b), and 75-20-231, the department shall issue, within 9 months following the date of acceptance of an application, any decision, opinion, order, certification, or permit required under the laws, other than those contained in this chapter, administered by the department. A decision, opinion, order, certification, or permit, with or without conditions, must be made under those laws.

1 Nevertheless, the department retains authority to make the determination required under 75-20-301(1)(c) or (3).
2 The decision, opinion, order, certification, or permit must be used in the final site selection process. Prior to the
3 issuance of a preliminary decision by the department and pursuant to rules adopted by the ~~board~~ department,
4 the department shall provide an opportunity for public review and comment.

5 (4) Except as provided in 75-1-205(4), 75-1-208(4)(b), and 75-20-231, within 9 months following
6 acceptance of an application for a facility, the department shall issue a report that must contain the
7 department's studies, evaluations, recommendations, customer fiscal impact analysis, if required pursuant to
8 69-2-216, and other pertinent documents resulting from its study and evaluation. An environmental impact
9 statement or analysis prepared pursuant to the Montana Environmental Policy Act may be included in the
10 department findings if compelling evidence indicates that adverse environmental impacts are likely to result due
11 to the construction and operation of a proposed facility. If the application is for a combination of two or more
12 facilities, the department shall issue its report within the greater of the lengths of time provided for in this
13 subsection for either of the facilities.

14 (5) For projects subject to joint review by the department and a federal land management agency, the
15 department's certification decision may be timed to correspond to the record of decision issued by the
16 participating federal agency.

17 (6) The departments of transportation; fish, wildlife, and parks; natural resources and conservation;
18 revenue; and public service regulation and the consumer counsel shall report to the department information
19 relating to the impact of the proposed facility on each department's area of expertise. The department shall
20 allocate funds obtained from filing fees to the departments making reports and to the office of consumer
21 counsel to reimburse them for the costs of compiling information and issuing the required report."
22

23 **Section 135.** ~~Section 75-20-219, MCA, is amended to read:~~

24 ~~"75-20-219. Amendments to certificate. (1) (a) Within 30 days after notice of an amendment to a~~
25 ~~certificate is given as set forth in 75-20-213(1), including notice to all active parties to the original proceeding,~~
26 ~~the department shall determine whether the proposed change in the facility would result in a material increase~~
27 ~~in any environmental impact of the facility or a substantial change in the location of all or a portion of the facility~~
28 ~~as set forth in the certificate.~~

(b) ~~If the department determines that the proposed change would result in a material increase in any environmental impact of the facility or a substantial change in the location of all or a portion of the facility, the department shall grant, deny, or modify the amendment with conditions as it considers appropriate.~~

(c) ~~If the department determines that a modification of the proposed amendment to the certificate is needed, it shall consult with the applicant.~~

(2) ~~In those cases in which the department determines that the proposed change in the facility would not result in a material increase in any environmental impact or would not be a substantial change in the location of all or a portion of the facility, the department shall automatically grant the amendment either as applied for or upon terms or conditions that the department considers appropriate.~~

(3) ~~If a hearing is requested under 75-20-223(2), the party requesting the hearing has the burden of showing by clear and convincing evidence that the department's determination is not reasonable.~~

(4) ~~If an amendment is required to a certificate that would affect, amend, alter, or modify a decision, opinion, order, certification, or air or water quality permit issued by the department or board, the amendment must be processed under the applicable statutes administered by the department or board."~~

Section 136. ~~Section 75-20-223, MCA, is amended to read:~~

~~**"75-20-223. Board review**Review of department decisions. (1) (a) A person aggrieved by the final decision of the department on an application for a certificate or the issuance of an air or water quality decision, opinion, order, certification, or permit under this chapter may within 30 days appeal the decision to the board department. Except as provided in this section, the contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing before the board department.~~

~~(b) If the department provided an opportunity for public comment on the application, the request for a hearing must be limited to those issues the party has raised in comments made to the department during the comment period unless the issues are related to a material change in law made during the comment period, to a judicial decision issued after the comment period, or to a material change to the draft permit, which was submitted for public comment, made by the department in the final permit decision and upon which the public did not have a meaningful opportunity to comment. The request for hearing must be filed within 30 days after the department renders its decision. An affidavit setting forth the grounds for the request must be filed with the~~

1 ~~request for a hearing.~~

2 ~~(c)—If a hearing is requested by a person other than the applicant or permittee, the applicant or~~
3 ~~permittee may, by filing a written election with the board department within 15 days of receipt of the request for~~
4 ~~hearing, elect to have the matter proceed to hearing before the board or to have the matter submitted directly to~~
5 ~~the district court for judicial review of the agency decision. The party who requests the hearing may elect to~~
6 ~~have the matter submitted either to the board department for a hearing or to the district court for judicial review~~
7 ~~by submitting a written election to the board department with the request for hearing. If there are conflicting~~
8 ~~elections between the parties, the matter must proceed to district court. If the applicant or permittee is not the~~
9 ~~person who requested the hearing and has elected to have the matter submitted to the district court, the person~~
10 ~~who submitted the request for a hearing shall file a petition for review of the permit decision within 15 days of~~
11 ~~receipt of notice from the permittee. If the person who requested the hearing has elected to have the matter~~
12 ~~proceed to district court, that person shall file a petition in district court within 15 days of filing the request. The~~
13 ~~petition must be limited to matters raised in the request for hearing and must be filed in the county in which the~~
14 ~~facility is located. If the applicant or permittee fails to make an election, the matter must proceed through the~~
15 ~~contested case process before the board department pursuant to the Montana Administrative Procedure Act.~~
16 ~~The board department or the district court shall apply the laws and rules in place when the department issued~~
17 ~~its decision, and the board department or the district court may not consider any issue from a party that was not~~
18 ~~presented to the department for the department's consideration during the formal comment period unless the~~
19 ~~issue is related to a material change in law made during the comment period, to a judicial decision issued after~~
20 ~~the comment period, or to a material change to the draft permit, which was submitted for public comment, made~~
21 ~~by the department in the final permit decision and upon which the public did not have a meaningful opportunity~~
22 ~~to comment.~~

23 ~~(2)—A person aggrieved by the final decision of the department on an application for amendment of a~~
24 ~~certificate may within 15 days appeal the decision to the board department as provided in subsections (1)(b)~~
25 ~~and (1)(c).~~

26 ~~(3)—A person aggrieved by the department's decision not to include an environmental impact~~
27 ~~statement or analysis in the department's findings pursuant to 75-20-216 may within 30 days appeal the~~
28 ~~decision as provided in subsections (1)(b) and (1)(c).~~

~~(4) The board department shall issue a final decision within 4 months from the close of the hearing on the merits or, if no hearing is held, within 3 months from the date that briefing by the parties is complete unless the applicant and the party other than the applicant agree in writing to an extension of time.~~

~~(5) A customer fiscal impact analysis required by 69-2-216 may not be used as the basis of an appeal of a final decision by the department."~~

Section 137. ~~Section 75-20-301, MCA, is amended to read:~~

~~"75-20-301. **Decision of department -- findings necessary for certification.** (1) Within 30 days after issuance of the report pursuant to 75-20-216 for facilities defined in 75-20-104(9)(a) and (9)(b) 75-20-104(9)(a) and (8)(b), the department shall approve a facility as proposed or as modified or an alternative to a proposed facility if the department finds and determines:~~

~~(a) the basis of the need for the facility;~~

~~(b) the nature of the probable environmental impact;~~

~~(c) that the facility minimizes adverse environmental impact, considering the state of available technology and the nature and economics of the various alternatives;~~

~~(d) in the case of an electric, gas, or liquid transmission line or aqueduct:~~

~~(i) what part, if any, of the line or aqueduct will be located underground;~~

~~(ii) that the facility is consistent with regional plans for expansion of the appropriate grid of the utility systems serving the state and interconnected utility systems; and~~

~~(iii) that the facility will serve the interests of utility system economy and reliability;~~

~~(e) that the location of the facility as proposed conforms to applicable state and local laws and regulations, except that the department may refuse to apply any local law or regulation if it finds that, as applied to the proposed facility, the law or regulation is unreasonably restrictive in view of the existing technology, of factors of cost or economics, or of the needs of consumers, whether located inside or outside the directly affected government subdivisions;~~

~~(f) that the facility will serve the public interest, convenience, and necessity;~~

~~(g) that the department or board has issued any necessary air or water quality decision, opinion, order, certification, or permit as required by 75-20-216(3); and~~

~~(h) that the use of public lands or federally designated energy corridors for location of a facility defined in 75-20-104(9)(a) or (9)(b) 75-20-104(8)(a) and (8)(b) was evaluated and public lands or federally designated energy corridors for that facility were selected whenever their use was compatible with:~~

~~(i) the requirements of subsections (1)(a) through (1)(g); and~~

~~(ii) transmission line reliability criteria established by transmission reliability agencies for a facility defined in 75-20-104(9)(a). 75-20-104(8)(a).~~

~~(2) In determining that the facility will serve the public interest, convenience, and necessity under subsection (1)(f), the department shall consider:~~

~~(a) the items listed in subsections (1)(a) and (1)(b);~~

~~(b) the benefits to the applicant and the state resulting from the proposed facility;~~

~~(c) the effects of the economic activity resulting from the proposed facility;~~

~~(d) the effects of the proposed facility on the public health, welfare, and safety;~~

~~(e) any other factors that it considers relevant.~~

~~(3) Within 30 days after issuance of the report pursuant to 75-20-216 for a facility defined in 75-20-104(9)(c) 75-20-104(8)(c), the department shall approve a facility as proposed or as modified or an alternative to a proposed facility if the department finds and determines:~~

~~(a) that the facility or alternative incorporates all reasonable, cost-effective mitigation of significant environmental impacts; and~~

~~(b) that unmitigated impacts, including those that cannot be reasonably quantified or valued in monetary terms, will not result in:~~

~~(i) a violation of a law or standard that protects the environment; or~~

~~(ii) a violation of a law or standard that protects the public health and safety.~~

~~(4) For facilities defined in 75-20-104, if the department cannot make the findings required in this section, it shall deny the certificate."~~

Section 138. ~~Section 75-20-303, MCA, is amended to read:~~

~~"75-20-303. Opinion issued with decision -- contents. (1) In rendering a decision on an application for a certificate, the department shall issue an opinion stating its reasons for the action taken.~~

~~(2) If the department has found that any regional or local law or regulation that would be otherwise applicable is unreasonably restrictive, it shall state in its opinion the reasons that it is unreasonably restrictive.~~

~~(3) A certificate issued by the department must include the following:~~

~~(a) an environmental evaluation statement related to the facility being certified. The statement must include but is not limited to analysis of the following information:~~

~~(i) the environmental impact of the proposed facility; and~~

~~(ii) any adverse environmental effects that cannot be avoided by issuance of the certificate;~~

~~(b) a plan for monitoring environmental effects of the proposed facility;~~

~~(c) a plan for monitoring the certified facility site between the time of certification and completion of construction;~~

~~(d) a time limit as provided in subsection (4);~~

~~(e) a statement confirming that notice was provided pursuant to subsection (5); and~~

~~(f) a statement signed by the applicant showing agreement to comply with the requirements of this chapter and the conditions of the certificate.~~

~~(4) (a) The department shall issue as part of the certificate the following time limits:~~

~~(i) For a facility as defined in 75-20-104(9)(a), 75-20-104(8)(a) that is more than 30 miles in length and for a facility defined in 75-20-104(9)(b), 75-20-104(8)(b), construction must be completed within 10 years.~~

~~(ii) For a facility as defined in 75-20-104(9)(a), 75-20-104(8)(a) that is 30 miles or less in length, construction must be completed within 5 years.~~

~~(iii) For a facility as defined in 75-20-104(9)(c), 75-20-104(8)(c), construction must begin within 6 years and continue with due diligence in accordance with preliminary construction plans established in the certificate.~~

~~(b) Unless extended, a certificate lapses and is void if the facility is not constructed or if construction of the facility is not commenced within the time limits provided in this section.~~

~~(c) The time limit may be extended for a reasonable period upon a showing by the applicant to the department that a good faith effort is being undertaken to complete construction under subsections (4)(a)(i) and (4)(a)(ii). Under this subsection, a good faith effort includes the process of acquiring any necessary state or federal permit or certificate for the facility and the process of judicial review of a permit or certificate.~~

~~(d) Construction may begin immediately upon issuance of a certificate unless the department finds~~

~~that there is substantial and convincing evidence that a delay in the commencement of construction is necessary and should be established for a particular facility.~~

~~(5) (a) (i) Except as provided in subsection (5)(a)(ii), for a facility defined in 75-20-104(9)(a) and (9)(b) 75-20-104(8)(a) and (8)(b), the environmental review conducted pursuant to Title 75, chapter 1, parts 1 through 3, prepared by the department must designate a 500-foot wide facility siting corridor along the facility route.~~

~~(ii) Prior to preparation of the environmental review or the draft environmental impact statement, the department shall consult the applicant and, in a manner determined by rule, landowners and identify areas in which a corridor considered in the environmental review document should be more or less than 500 feet wide. The corridor width may not be narrower than the applicant's right-of-way. For each area in which the corridor is more or less than 500 feet in width, the department shall provide a written justification. The department may not modify a corridor after issuance of the final environmental review document.~~

~~(b) The department shall provide written notice of the availability of each environmental review document to each owner of property within a corridor. No more than 60 days prior to the availability of each environmental review document, the names and addresses of the property owners must be obtained from the property tax rolls of the county where the property is located. Except as provided in subsection (5)(c), the notice must:~~

~~(i) be delivered personally or by first class mail. If delivered personally, the property owner shall sign a receipt verifying that the property owner received the statement.~~

~~(ii) inform the property owner that the property owner's property is located within a corridor;~~

~~(iii) inform the property owner about how a copy of the environmental review document may be obtained; and~~

~~(iv) inform the property owner of the property owner's rights under this chapter concerning the location of the facility and that more information concerning those rights may be obtained from the department.~~

~~(c) If there is more than one name listed on the property tax rolls for a single property, the notice must be mailed to the first listed property owner at the address on the property tax rolls.~~

~~(d) By mailing the notice as provided in subsection (5)(c), the notice requirements in subsection (5)(b) are satisfied.~~

~~(6) (a) A certificate holder may submit an adjustment of the location of a facility outside the approved facility siting corridor to the department. The adjustment must be accompanied by the written agreement of the affected property owner and all contiguous property owners that would be affected. The submission must include a map showing the approved facility siting corridor and the proposed adjustment. At the time of submission to the department, the adjustment must be accompanied by a copy of a legal notice published in a newspaper of general circulation in the area of the adjustment. The legal notice must specify that public comments on the adjustment may be submitted to the department within 10 days of the publication date of the notice.~~

~~(b) The certificate holder may construct the facility as described in the submission unless the department notifies the certificate holder within 15 days of the submission that the department has determined that:~~

~~(i) the adjustment would change the basis of any finding required under 75-20-301 to the extent that the department would have selected a different siting corridor for the facility; or~~

~~(ii) the adjustment would materially increase unmitigated adverse impacts.~~

~~(c) An adjustment pursuant to subsection (6)(a) is not subject to:~~

~~(i) Title 75, chapter 1, part 2;~~

~~(ii) a certificate amendment under 75-20-219; or~~

~~(iii) a board review under 75-20-223.~~

~~(d) (i) For each facility, the department shall maintain a list of persons who requested to receive electronic notice of any adjustment submitted pursuant to this subsection (6).~~

~~(ii) Upon receipt of a submitted adjustment, the department shall:~~

~~(A) post information about the adjustment on the department's website; and~~

~~(B) electronically notify each person identified in subsection (6)(d)(i) of the adjustment and where information about the adjustment may be viewed."~~

Section 139. ~~Section 75-20-304, MCA, is amended to read:~~

~~"75-20-304. Waiver of provisions of certification proceedings. (1) The department may waive compliance with any of the provisions of 75-20-216 and this part if the applicant makes a clear and convincing~~

1 ~~showing to the department at a public hearing that an immediate, urgent need for a facility exists and that the~~
2 ~~applicant did not have knowledge that the need for the facility existed sufficiently in advance to fully comply with~~
3 ~~the provisions of 75-20-216 and this part.~~

4 ~~(2) The department may waive compliance with any of the provisions of this chapter upon receipt of~~
5 ~~notice by a person subject to this chapter that a facility or associated facility has been damaged or destroyed as~~
6 ~~a result of fire, flood, or other natural disaster or as the result of insurrection, war, or other civil disorder and~~
7 ~~there exists an immediate need for construction of a new facility or associated facility or the relocation of a~~
8 ~~previously existing facility or associated facility in order to promote the public welfare.~~

9 ~~(3) The department shall waive compliance with the requirements of 75-20-301(1)(c), (2)(b), and~~
10 ~~(2)(c) and the requirements of 75-20-211(1)(a)(iii) and (1)(a)(iv) and 75-20-216(3) relating to consideration of~~
11 ~~alternative sites if the applicant makes a clear and convincing showing to the department at a public hearing~~
12 ~~that:~~

13 ~~(a) a proposed facility will be constructed in a county where a single employer within the county has~~
14 ~~permanently curtailed or ceased operations, causing a loss of 250 or more permanent jobs within 2 years at the~~
15 ~~employer's operations within the preceding 10-year period;~~

16 ~~(b) the county and municipal governing bodies in whose jurisdiction the facility is proposed to be~~
17 ~~located support by resolution the waiver;~~

18 ~~(c) the proposed facility will be constructed within a 15-mile radius of the operations that have ceased~~
19 ~~or been curtailed; and~~

20 ~~(d) the proposed facility will have a beneficial effect on the economy of the county in which the facility~~
21 ~~is proposed to be located.~~

22 ~~(4) The waiver provided for in subsection (3) applies only to permanent job losses by a single~~
23 ~~employer. The waiver provided for in subsection (3) does not apply to jobs of a temporary or seasonal nature,~~
24 ~~including but not limited to construction jobs or job losses during labor disputes.~~

25 ~~(5) The waiver provided for in subsection (3) does not apply to consideration of alternatives or~~
26 ~~minimum adverse environmental impact for a facility defined in 75-20-104(9)(a) or (9)(b) 75-20-104(8)(a) or~~
27 ~~(8)(b) or for an associated facility defined in 75-20-104(3).~~

28 ~~(6) The applicant shall pay all expenses required to process and conduct a hearing on a waiver~~

request under subsection (3). However, any payments made under this subsection must be credited toward the fee paid under 75-20-215 to the extent that the data or evidence presented at the hearing or the decision of the department under subsection (3) can be used in making a certification decision under this chapter.

~~(7) The department may grant only one waiver under subsections (3) and (4) for each permanent loss of jobs as defined in subsection (3)(a)."~~

Section 140. Section 75-20-401, MCA, is amended to read:

~~"75-20-401. Additional requirements by other governmental agencies not permitted after issuance of certificate -- exceptions -- venue for challenging certificate issuance. (1) Notwithstanding any other law, a state or regional agency or municipality or other local government may not require any approval, consent, permit, certificate, or other condition for the construction, operation, or maintenance of a facility authorized by a certificate issued pursuant to this chapter, except that the department and board retain retains the authority that they have or may be granted to determine compliance of the proposed facility with state and federal standards and implementation plans for air and water quality and to enforce those standards.~~

~~(2) This chapter does not prevent the application of state laws for the protection of employees engaged in the construction, operation, or maintenance of a facility.~~

~~(3) A judicial challenge to a certificate issued pursuant to this chapter by a party other than the certificate holder or applicant must include the party to whom the certificate was issued as provided in this chapter unless otherwise agreed to by the certificate holder or applicant. All judicial challenges of certificates for projects with a project cost, as determined by the court, of more than \$1 million must have precedence over any civil cause of a different nature pending in that court. If the court determines that the challenge was without merit or was for an improper purpose, such as to harass, to cause unnecessary delay, or to impose needless or increased cost in litigation, the court may award attorney fees and costs incurred in defending the action.~~

~~(4) An action to challenge the issuance of a certificate pursuant to this chapter must be brought in the county in which the activity authorized by the certificate will occur. If an activity will occur in more than one county, the action may be brought in any of the counties in which the activity will occur."~~

Section 141. Section 75-20-406, MCA, is amended to read:

1 **"75-20-406. Judicial review of ~~board~~department decisions.** (1) A person aggrieved by the final
2 decision of the ~~board~~department or board on an application for a certificate may obtain judicial review of that
3 decision by the filing of a petition in a state district court of competent jurisdiction. A challenge to the issuance
4 of a certificate must be brought in the county in which the activity authorized by the certificate will occur. If an
5 activity will occur in more than one county, the action may be brought in any of the counties in which the activity
6 will occur.

7 (2) The judicial review procedure is the procedure for contested cases under the Montana
8 Administrative Procedure Act.

9 (3) A judicial challenge to a certificate issued pursuant to this chapter by a party other than the
10 certificate holder or applicant must include the party to whom the certificate was issued as provided in this
11 chapter unless otherwise agreed to by the certificate holder or applicant. All judicial challenges of certificates for
12 projects with a project cost, as determined by the court, of more than \$1 million must have precedence over any
13 civil cause of a different nature pending in that court. If the court determines that the challenge was without
14 merit or was for an improper purpose, such as to harass, to cause unnecessary delay, or to impose needless or
15 increased cost in litigation, the court may award attorney fees and costs incurred in defending the action."

16
17 **Section 142.** Section 75-20-407, MCA, is amended to read:

18 **"75-20-407. Jurisdiction of courts restricted.** Except as expressly set forth in 75-20-401, 75-20-
19 406, and 75-20-408, no court of this state has jurisdiction to hear or determine any issue, case, or controversy
20 concerning any matter which was or could have been determined in a proceeding before the ~~board~~board or
21 department under this chapter or to stop or delay the construction, operation, or maintenance of a facility,
22 except to enforce compliance with this chapter or the provisions of a certificate issued ~~hereunder~~ pursuant to
23 75-20-404 and 75-20-405 or 75-20-408."

24
25 **Section 143.** ~~Section 75-20-410, MCA, is amended to read:~~

26 ~~"75-20-410. Order not stayed by appeal -- stay or suspension by court -- limitations.~~
27 ~~Notwithstanding any contrary provision in the law, the pendency of an appeal from a board department order~~
28 ~~does not automatically stay or suspend the operation of the order. During the pendency of the appeal, the court~~

1 ~~may upon motion by one of the parties stay or suspend, in whole or in part, the operation of the board's~~
2 ~~department's orders on terms the court considers just. The court's action must be in accordance with the~~
3 ~~practice of courts exercising equity jurisdiction, subject to the following limitations:~~

4 ~~(1) No stay may be granted without notice to the parties and an opportunity to be heard by the court.~~

5 ~~(2) No board department order may be stayed or suspended without finding that irreparable damage~~
6 ~~would otherwise result to the party seeking the stay or suspension, and any other stay or suspension of a board~~
7 ~~department order must specify the nature of the damage."~~

8
9 **Section 144.** ~~Section 75-20-411, MCA, is amended to read:~~

10 ~~"75-20-411. Surety bond -- other security. If an order of the board department is stayed or~~
11 ~~suspended, the court may require a bond with good and sufficient surety conditioned that the party petitioning~~
12 ~~for review answer for all damages caused by the delay in enforcing the order of the board except that the cost~~
13 ~~of the bond is not chargeable to the applicant as part of the fee. If the party petitioning for review prevails upon~~
14 ~~final resolution of an appeal, the party does not forfeit bond nor is the party responsible for damages caused by~~
15 ~~delay."~~

16
17 **Section 145.** Section 75-20-1001, MCA, is amended to read:

18 **"75-20-1001. Geothermal exploration -- notification of department.** The ~~board~~ department shall
19 adopt rules requiring every person who proposes to gather geological data by boring of test holes or other
20 underground exploration, investigation, or experimentation related to the possible future development of a
21 facility employing geothermal resources to comply with the following requirements:

22 (1) notify the department of the proposed action;

23 (2) submit to the department a description of the area involved;

24 (3) submit to the department a statement of the proposed activities to be conducted and the methods
25 to be utilized;

26 (4) submit to the department geological data reports at such times as may be required by the rules;

27 and

28 (5) submit such other information as the ~~board~~ department may require in the rules."

1

2 **Section 146.** ~~Section 75-20-1202, MCA, is amended to read:~~

3 ~~"75-20-1202. Definitions. As used in 75-20-201, 75-20-203, and this part, the following definitions~~
4 ~~apply:~~

5 ~~(1) "Facility", as defined in 75-20-104(9) 75-20-104(8), is further defined to include any nuclear facility~~
6 ~~as defined in subsection (2)(a).~~

7 ~~(2) (a) "Nuclear facility" means each plant, unit, or other facility designed for or capable of:~~

8 ~~(i) generating 50 megawatts of electricity or more by means of nuclear fission;~~

9 ~~(ii) converting, enriching, fabricating, or reprocessing uranium minerals or nuclear fuels; or~~

10 ~~(iii) storing or disposing of radioactive wastes or materials from a nuclear facility.~~

11 ~~(b) Nuclear facility does not include any small-scale facility used solely for educational, research, or~~
12 ~~medical purposes not connected with the commercial generation of energy."~~

13

14 **Section 147.** Section 75-20-1203, MCA, is amended to read:

15 **"75-20-1203. Additional requirements for issuance of a certificate for the siting of a nuclear**
16 **facility.** (1) The ~~board~~ department may not issue a certificate to construct a nuclear facility unless it finds that:

17 (a) no legal limits exist regarding the rights of a person or group of persons to bring suit for and
18 recover full and just compensation from the designers, manufacturers, distributors, owners, ~~and/or or~~ operators
19 of a nuclear facility for damages resulting from the existence or operation of the facility; and further, that no
20 legal limits exist regarding the total compensation ~~which~~ that may be required from the designers,
21 manufacturers, distributors, owners, ~~and/or or~~ operators of a nuclear facility for damages resulting from the
22 existence or operation of ~~such the~~ the facility;

23 (b) the effectiveness of all safety systems, including but not limited to the emergency core cooling
24 systems, of ~~such the~~ the nuclear facility has been demonstrated, to the satisfaction of the ~~board~~ department, by the
25 comprehensive laboratory testing of substantially similar physical systems in actual operation;

26 (c) the radioactive materials from ~~such the~~ the nuclear facilities can be contained with no reasonable
27 chance, as determined by the ~~board~~ department, of intentional or unintentional escape or diversion of ~~such~~
28 radioactive materials into the natural environment in ~~such a manner as to cause that causes~~ such a manner as to cause substantial or long-

term harm or hazard to present or future generations due to imperfect storage technologies, earthquakes or other acts of God, theft, sabotage, acts of war or other social instabilities, or whatever other causes the ~~board~~ department may ~~deem to be consider~~ reasonably possible, at any time during which ~~such the~~ materials remain a radiological hazard; and

(d) the owner of ~~such the~~ nuclear facility has posted with the ~~board department~~ a bond totaling not less than 30% of the total capital cost of the facility, as estimated by the ~~board department~~, to pay for the decommissioning of the facility and the decontamination of any area contaminated with radioactive materials due to the existence or operation of the facility in the event the owner fails to pay the full costs of ~~such the~~ decommissioning and decontamination. Excess bond, if any, ~~shall must~~ be refunded to the owner upon demonstration, to the satisfaction of the ~~board department~~, that the site and environs of the facility pose no radiological danger to present or future generations and that whatever other conditions the ~~board department~~ may ~~deem consider~~ reasonable ~~have been are~~ met.

(2) Nothing in this section ~~shall may~~ be construed as relieving the owner of a nuclear facility from full financial responsibility for the decommissioning of ~~such the~~ facility and decontamination of any area contaminated with radioactive materials as a result of the existence or operation of ~~such the~~ facility at any time during which such materials remain a radiological hazard."

Section 148. Section 75-20-1205, MCA, is amended to read:

"75-20-1205. Emergency approval authority invalid for nuclear facilities. Notwithstanding the provisions of 75-20-304(2) and (3), the ~~board department~~ may not waive compliance with any of the provisions of 75-20-201 and 75-20-203 or this part relating to certification of a nuclear facility."

Section 149. ~~Section 75-26-301, MCA, is amended to read:~~

~~"75-26-301. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:~~

~~(1) "Board" means the board of environmental review provided for in 2-15-3502.~~

~~(2)(1) "Decommission" or "decommissioning" means:~~

~~(a) except as provided in 75-26-304(2), the removal of buildings, cabling, electrical components,~~

~~roads, or any other facilities associated with a wind generation or solar facility;~~

~~(b) except as provided in 75-26-304(2), reclamation of surface lands to the previous grade and to comparable productivity in order to prevent adverse hydrologic effects; and~~

~~(c) (i) the removal of the solar facility after the end of the facility's useful life or abandonment; or
(ii) the removal of an aboveground wind turbine tower after the end of a wind generation facility's useful life or abandonment.~~

~~(3)(2) "Department" means the department of environmental quality provided for in 2-15-3501.~~

~~(4)(3) "Owner" means a person who owns a wind generation or solar facility used for the generation of electricity.~~

~~(5)(4) "Person" means any individual, firm, partnership, company, association, corporation, city, town, or local governmental entity or any other state, federal, or private entity, whether organized for profit or not.~~

~~(6)(5) "Repurposed" means having made a significant investment in an existing wind generation or solar facility to extend the useful life of the facility by more than 5 years.~~

~~(7)(6) "Solar facility" means an installation or combination of solar panels or plates, including a canopy or array, that captures and converts solar radiation to produce electricity and includes flat plate, focusing solar collectors, or photovoltaic solar cells that:~~

~~(a) has a nameplate capacity greater than or equal to 2 megawatts; and~~

~~(b) produces electricity that is not consumed on the premises of the solar facility or on land immediately adjacent to the premises of the solar facility.~~

~~(8)(7) "Wind generation facility" means any combination of a physically connected wind turbine or turbines, associated prime movers, and other associated property, including appurtenant land and improvements and personal property, that are normally operated together to produce electric power from wind and that have a nameplate capacity greater than or equal to 25 megawatts."~~

Section 150. ~~Section 75-26-304, MCA, is amended to read:~~

~~"75-26-304. Bond -- penalty for failure to submit. (1) (a) Within 12 months of a wind generation facility or solar facility commencing commercial operation, the owner of a wind generation facility or solar facility operating in Montana shall:~~

~~(i) — notify the department in writing of the date that the facility began commercial operation;~~

~~(ii) — subject to subsection (2), submit a plan for decommissioning the facility to the department, including the scope of work to be completed and cost estimates for completion; and~~

~~(iii) — provide the department with any other necessary information in accordance with this part and rules adopted pursuant to this part in order for the department to determine bond requirements in accordance with this section.~~

~~(b) — Except as provided in subsection (1)(c), if a wind generation facility or solar facility commenced commercial operation before May 7, 2019, the owner of the facility shall submit to the department the information required in subsection (1)(a) on or before July 1, 2020.~~

~~(c) — If a wind generation facility commenced commercial operation before May 7, 2019, and the owner of the facility submitted information required by subsection (1)(a) on or before July 1, 2018, the owner is not required to resubmit the information.~~

~~(2) — If a property owner and the owner of a wind generation facility or solar facility reach an agreement concerning alternative restoration of buildings, cabling, electrical components, roads, or any other associated facilities, instead of removal, or alternative plans for reclamation of surface lands, or both, decommissioning does not include removal, plans for reclamation, or both, as long as a copy of the agreement is provided to the department.~~

~~(3) — (a) If necessary, the department may modify a plan for decommissioning to determine bond requirements in accordance with subsections (4) through (8).~~

~~(b) — The department shall notify the owner of the facility of any modification. The owner of the wind generation facility or solar facility may appeal a modification by the department of a plan for decommissioning to the board department within 60 days of receiving notice of the modification to the plan.~~

~~(4) — In determining the amount of a bond required in accordance with subsection (6), the department shall consider:~~

~~(a) — the character and nature of the site where the wind generation facility or solar facility is located;~~

~~and~~

~~(b) — the current market salvage value of the wind generation facility or solar facility, as determined by an independent evaluator.~~

~~(5) Except as provided in subsections (7) and (8) and in accordance with subsection (6), the owner of a wind generation facility or solar facility shall submit to the department a bond payable to the state of Montana in a form acceptable by the department and in the sum determined by the department, conditioned on the faithful decommissioning of the wind generation facility or solar facility.~~

~~(6) (a) Except as provided in subsections (7) and (8), if a wind generation facility or solar facility commenced commercial operation on or before January 1, 2007, the operator shall submit the decommissioning bond to the department prior to the conclusion of the 16th year of operation of the wind generation facility or solar facility.~~

~~(b) Except as provided in subsections (7) and (8), if a wind generation facility or solar facility commenced commercial operation after January 1, 2007, the operator shall submit the decommissioning bond to the department prior to the conclusion of the 15th year of operation of the wind generation facility or solar facility.~~

~~(7) If a wind generation facility or solar facility is repurposed, as determined by the department in consultation with the owner, the owner is not required to provide a bond, and any existing bond must be released until the repurposed facility reaches its 5th year of operation.~~

~~(8) An owner of a wind generation facility or solar facility is exempt from the requirements of subsection (6) if:~~

~~(a) the owner posts a bond with a federal agency, with the department of natural resources and conservation for the lease of state land, or with a tribal, county, or local government;~~

~~(b) the owner furnishes documents to the department that prove the owner is responsible under the terms and conditions of a lease agreement to provide private bonding. The parties shall agree that release of the agreed upon bond is subject to the approval of the department upon completion of reclamation.~~

~~(c) the private landowner on whose land the wind generation facility or solar facility is located owns a 10% or greater share of the wind generation facility or solar facility, as determined by the department; or~~

~~(d) the facility:~~

~~(i) commenced commercial operation on or before January 1, 2018, is a wind generation facility, and has less than 25 megawatts in nameplate capacity; or~~

~~(ii) commenced commercial operation on or before January 1, 2020, is a solar facility, and has less~~

1 ~~than 2 megawatts in nameplate capacity.~~

2 ~~(9) (a) If the owner of the wind generation facility or solar facility fails to submit a decommissioning~~
3 ~~bond acceptable to the department within the timeframe required by this section, the department shall provide~~
4 ~~notice to the facility owner. If after 30 days the owner of a wind generation facility or solar facility has not~~
5 ~~submitted a decommissioning bond, the department may assess an administrative penalty of not more than~~
6 ~~\$1,500 and an additional administrative penalty of not more than \$1,500 for each day the failure to submit the~~
7 ~~decommissioning bond continues.~~

8 ~~(b) The owner of the wind generation facility or solar facility may appeal the department's penalty~~
9 ~~assessment to the board within 20 days after receipt of written notice of the penalty. The contested case~~
10 ~~provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing before the~~
11 ~~board department under this subsection (9).~~

12 ~~(10) If the owner of a wind generation facility or solar facility transfers ownership of the facility to a~~
13 ~~successor owner, the first owner's bond must be released after 90 days. The new owner shall submit any~~
14 ~~necessary bond within 90 days after transfer of ownership or be subject to penalties in accordance with this~~
15 ~~section.~~

16 ~~(11) Once every 5 years, the owner of a wind generation facility or solar facility may submit an~~
17 ~~amended plan for the department's approval. As part of the submission, the owner of a wind generation facility~~
18 ~~or solar facility may also apply to the department for a reduction in the amount of the decommissioning bond~~
19 ~~applicable to the wind energy facility or solar facility. The owner's application to the department must include a~~
20 ~~detailed description of any material changes to information considered by the department in setting the initial~~
21 ~~amount of the bond.~~

22 ~~(12) Submitting a bond in accordance with this section does not absolve the owner of a wind~~
23 ~~generation facility or solar facility from complying with applicable regulations and requirements for:~~

24 ~~(a) areas subject to local zoning adopted under Title 76, chapter 2;~~

25 ~~(b) military affected areas under Title 10, chapter 1, part 15; or~~

26 ~~(c) airport affected areas under Title 67, chapter 7."~~

27
28 **Section 151.** Section 76-3-622, MCA, is amended to read:

"76-3-622. Water and sanitation information to accompany preliminary plat. (1) Except as provided in subsection (2), the subdivider shall submit to the governing body or to the agent or agency designated by the governing body the information listed in this section for proposed subdivisions that will include new water supply or wastewater facilities. The information must include:

- (a) a vicinity map or plan that shows:
 - (i) the location, within 100 feet outside of the exterior property line of the subdivision and on the proposed lots, of:
 - (A) flood plains;
 - (B) surface water features;
 - (C) springs;
 - (D) irrigation ditches;
 - (E) existing, previously approved, and, for parcels less than 20 acres, proposed water wells and wastewater treatment systems;
 - (F) for parcels less than 20 acres, mixing zones identified as provided in subsection (1)(g); and
 - (G) the representative drainfield site used for the soil profile description as required under subsection (1)(d); and
 - (ii) the location, within 500 feet outside of the exterior property line of the subdivision, of public water and sewer facilities;
- (b) a description of the proposed subdivision's water supply systems, storm water systems, solid waste disposal systems, and wastewater treatment systems, including:
 - (i) whether the water supply and wastewater treatment systems are individual, shared, multiple user, or public as those systems are defined in rules published by the department of environmental quality; and
 - (ii) if the water supply and wastewater treatment systems are shared, multiple user, or public, a statement of whether the systems will be public utilities as defined in 69-3-101 and subject to the jurisdiction of the public service commission or exempt from public service commission jurisdiction and, if exempt, an explanation for the exemption;
- (c) a drawing of the conceptual lot layout at a scale no smaller than 1 inch equal to 200 feet that shows all information required for a lot layout document in rules adopted by the department of environmental

quality pursuant to 76-4-104;

(d) evidence of suitability for new onsite wastewater treatment systems that, at a minimum, includes:

(i) a soil profile description from a representative drainfield site identified on the vicinity map, as provided in subsection (1)(a)(i)(G), that complies with standards published by the department of environmental quality;

(ii) demonstration that the soil profile contains a minimum of 4 feet of vertical separation distance between the bottom of the permeable surface of the proposed wastewater treatment system and a limiting layer; and

(iii) in cases in which the soil profile or other information indicates that ground water is within 7 feet of the natural ground surface, evidence that the ground water will not exceed the minimum vertical separation distance provided in subsection (1)(d)(ii);

(e) for new water supply systems, unless cisterns are proposed, evidence of adequate water availability:

(i) obtained from well logs or testing of onsite or nearby wells;

(ii) obtained from information contained in published hydrogeological reports; or

(iii) as otherwise specified by rules adopted by the department of environmental quality pursuant to 76-4-104;

(f) evidence of sufficient water quality in accordance with rules adopted by the department of environmental quality pursuant to 76-4-104;

(g) a preliminary analysis of potential impacts to ground water quality from new wastewater treatment systems, using as guidance rules adopted by the board of environmental review pursuant to 75-5-301 and 75-5-303 related to standard mixing zones for ground water, source specific mixing zones, and nonsignificant changes in water quality. The preliminary analysis may be based on currently available information and must consider the effects of overlapping mixing zones from proposed and existing wastewater treatment systems within and directly adjacent to the subdivision. Instead of performing the preliminary analysis required under this subsection (1)(g), the subdivider may perform a complete nondegradation analysis in the same manner as is required for an application that is reviewed under Title 76, chapter 4.

(2) A subdivider whose land division is excluded from review under 76-4-125(1) is not required to

1 submit the information required in this section.

2 (3) A governing body may not, through adoption of regulations, require water and sanitation
3 information in addition to the information required under this section unless the governing body complies with
4 the procedures provided in 76-3-511."

5

6 **Section 152.** ~~Section 76-4-102, MCA, is amended to read:~~

7 ~~"76-4-102. Definitions. As used in this part, unless the context clearly indicates otherwise, the~~
8 ~~following definitions apply:~~

9 (1) ~~"Adequate county water and/or sewer district facilities" means facilities provided by a county water~~
10 ~~and/or sewer district incorporated under Title 7, chapter 13, that operate in compliance with Title 75, chapters 5~~
11 ~~and 6.~~

12 (2) ~~"Adequate municipal facilities" means municipally, publicly, or privately owned facilities that supply~~
13 ~~water, treat sewage, or dispose of solid waste for all or most properties within the boundaries of a municipality~~
14 ~~and that are operating in compliance with Title 75, chapters 5 and 6.~~

15 (3) ~~"Board" means the board of environmental review.~~

16 (4)(3) ~~"Certifying authority" means a municipality or a county water and/or sewer district that meets~~
17 ~~the eligibility requirements established by the department under 76-4-104(6).~~

18 (5)(4) ~~"Department" means the department of environmental quality.~~

19 (6)(5) ~~"Extension of a public sewage system" means a sewerline that connects two or more sewer~~
20 ~~service lines to a sewer main.~~

21 (7)(6) ~~"Extension of a public water supply system" means a waterline that connects two or more water~~
22 ~~service lines to a water main.~~

23 (8)(7) ~~"Facilities" means public or private facilities for the supply of water or disposal of sewage or~~
24 ~~solid waste and any pipes, conduits, or other stationary method by which water, sewage, or solid wastes might~~
25 ~~be transported or distributed.~~

26 (9)(8) ~~"Individual water system" means any water system that serves one living unit or commercial~~
27 ~~unit and that is not a public water supply system as defined in 75-6-102.~~

28 (10)(9) ~~"Mixing zone" has the meaning provided in 75-5-103.~~

~~(11)(10) (a) "Proposed drainfield mixing zone" means a mixing zone submitted for approval under this chapter after March 30, 2011.~~

~~(b) The term does not include drainfield mixing zones that existed or were approved under this chapter prior to March 30, 2011.~~

~~(12)(11) (a) "Proposed well isolation zone" means a well isolation zone submitted for approval under this chapter after October 1, 2013.~~

~~(b) The term does not include well isolation zones that existed or were approved under this chapter prior to October 1, 2013.~~

~~(13)(12) "Public sewage system" or "public sewage disposal system" means a public sewage system as defined in 75-6-102.~~

~~(14)(13) "Public water supply system" has the meaning provided in 75-6-102.~~

~~(15)(14) "Registered professional engineer" means a person licensed to practice as a professional engineer under Title 37, chapter 67.~~

~~(16)(15) "Registered sanitarian" means a person licensed to practice as a sanitarian under Title 37, chapter 40.~~

~~(17)(16) "Reviewing authority" means the department or a local department or board of health certified to conduct a review under 76-4-104.~~

~~(18)(17) "Sanitary restriction" means a prohibition against the erection of any dwelling, shelter, or building requiring facilities for the supply of water or the disposition of sewage or solid waste or the construction of water supply or sewage or solid waste disposal facilities until the department has approved plans for those facilities.~~

~~(19)(18) "Sewage" has the meaning provided in 75-5-103.~~

~~(20)(19) "Sewer service line" means a sewerline that connects a single building or living unit to a public sewage system or to an extension of a public sewage system.~~

~~(21)(20) "Solid waste" has the meaning provided in 75-10-103.~~

~~(22)(21) "Subdivision" means a division of land or land so divided that creates one or more parcels containing less than 20 acres, exclusive of public roadways, in order that the title to or possession of the parcels may be sold, rented, leased, or otherwise conveyed and includes any resubdivision, any condominium,~~

~~townhome, or townhouse, or any area, regardless of size, that provides permanent multiple space for recreational camping vehicles or mobile homes.~~

~~(23)(22) "Water service line" means a waterline that connects a single building or living unit to a public water supply system or to an extension of a public water supply system.~~

~~(24)(23) "Well isolation zone" means the area within a 100-foot radius of a water well."~~

Section 153. ~~Section 76-4-108, MCA, is amended to read:~~

~~**"76-4-108. — Enforcement.** (1) If the reviewing authority has reason to believe that a violation of this part or a rule adopted or an order issued under this part has occurred, the reviewing authority may have written notice and an order served personally or by certified mail on the alleged violator or the alleged violator's agent. The notice must state the provision alleged to be violated, the facts alleged to constitute the violation, the corrective action required by the reviewing authority, and the time within which the action is to be taken. A notice and order issued by the department under this section may also assess an administrative penalty as provided in 76-4-109. The alleged violator may, no later than 30 days after service of a notice and order under this section, request a hearing before the local reviewing authority if it issued the notice of violation or the board department if the department issued the notice of violation. A request for a hearing must be filed in writing with the appropriate entity and must state the reason for the request. If a request is filed, a hearing must be held within a reasonable time.~~

~~(2) In addition to or instead of issuing an order, the reviewing authority may initiate any other appropriate action to compel compliance with this part.~~

~~(3) The provisions of this part may be enforced by a reviewing authority other than the department or board only for those divisions described in 76-4-104(3). If a local reviewing authority fails to adequately enforce the provisions of this part, the department or the board may compel compliance with this part under the provisions of this section.~~

~~(4) When a local reviewing authority exercises the authority delegated to it by this section, the local reviewing authority is legally responsible for its actions under this part.~~

~~(5) If the department or a local reviewing authority determines that a violation of this part, a rule adopted under this part, or an order issued under this part has occurred, the department or the local reviewing~~

~~authority may revoke its certificate of approval for the subdivision and reimpose sanitary restrictions following written notice to the alleged violator. Upon revocation of a certificate, the person aggrieved by revocation may request a hearing. A hearing request must be filed in writing within 30 days after receipt of the notice of revocation and must state the reason for the request. The hearing is before the board department if the department revoked the certificate or before the local reviewing authority if the local reviewing authority revoked the certificate.~~

~~(6) The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing held under this section."~~

Section 154. ~~Section 76-4-126, MCA, is amended to read:~~

~~"76-4-126. **Right to hearing.** (1) Upon a denial of approval of subdivision plans and specifications relating to environmental health facilities, the person who is aggrieved by the denial may request a hearing before the board department. A hearing request must be filed, in writing, within 30 days after receipt of the notice of denial and must state the reason for the request. The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing held under this section.~~

~~(2) If the grounds for a denial of approval under this part include noncompliance with local laws or regulations other than those adopting, pursuant to 50-2-116, state minimum standards for the control and disposal of sewage, the board department shall upon receipt of a hearing request refer the local compliance issues to the appropriate local authority. After opportunity for a hearing, the local authority shall issue a determination regarding the local compliance issues, and the board department shall incorporate the determination of the local authority in the board's final decision."~~

Section 155. Section 76-4-1001, MCA, is amended to read:

"76-4-1001. **Penalty factors.** (1) In determining the amount of an administrative or civil penalty to which subsection (4) applies, the department of environmental quality or the district court, as appropriate, shall take into account the following factors:

- (a) the nature, extent, and gravity of the violation;
- (b) the circumstances of the violation;

- 1 (c) the violator's prior history of any violation, which:
- 2 (i) must be a violation of a requirement under the authority of the same chapter and part as the
- 3 violation for which the penalty is being assessed;
- 4 (ii) must be documented in an administrative order or a judicial order or judgment issued within 3 years
- 5 prior to the date of the occurrence of the violation for which the penalty is being assessed; and
- 6 (iii) may not, at the time that the penalty is being assessed, be undergoing or subject to administrative
- 7 appeal or judicial review;
- 8 (d) the economic benefit or savings resulting from the violator's action;
- 9 (e) the violator's good faith and cooperation;
- 10 (f) the amounts voluntarily expended by the violator, beyond what is required by law or order, to
- 11 address or mitigate the violation or impacts of the violation; and
- 12 (g) other matters that justice may require.

13 (2) After the amount of a penalty is determined under subsection (1), the department of environmental

14 quality or the district court, as appropriate, may consider the violator's financial ability to pay the penalty and

15 may institute a payment schedule or suspend all or a portion of the penalty.

16 (3) The department of environmental quality may accept a supplemental environmental project as

17 mitigation for a portion of the penalty. For purposes of this section, a "supplemental environmental project" is an

18 environmentally beneficial project that a violator agrees to undertake in settlement of an enforcement action but

19 which the violator is not otherwise legally required to perform.

20 (4) This section applies to penalties assessed by the department of environmental quality or the

21 district court under Title 75, chapters 2, 5, 6, 11, and 20; Title 75, chapter 10, parts 2, 4, 5, and 12; and Title 76,

22 chapter 4.

23 (5) ~~The board of environmental review and the department of environmental quality may, for the~~

24 ~~statutes listed in subsection (4) for which each has rulemaking authority, adopt rules to implement this section."~~

25

26 **Section 156. ~~Section 80-15-102, MCA, is amended to read:~~**

27 **~~"80-15-102. Definitions. Unless the context requires otherwise, in this chapter, the following~~**

28 **~~definitions apply:~~**

~~(1) "Agricultural chemical" means any of the following:~~

~~(a) a pesticide as defined in 80-8-102;~~

~~(b) an isomer, degradation, or metabolic product of a pesticide; or~~

~~(c) a commercial fertilizer as defined in 80-10-101.~~

~~(2) "Aquifer" means a water-bearing, subsurface formation capable of yielding sufficient quantities of water to a well for a beneficial use.~~

~~(3) "Best management plans" and "best management practices" mean activities, procedures, and practices established by the department, in consultation with the Montana state university-Bozeman extension service, to prevent or remedy the introduction of agricultural chemicals into ground water to the extent technically and economically practical.~~

~~(4) "Board" means the board of environmental review provided for in 2-15-3502.~~

~~(5)(4) "Confirmatory procedure" means a process for verifying the detection of agricultural chemicals in water, soil, and other related media.~~

~~(6)(5) "EPA" means the United States environmental protection agency.~~

~~(7)(6) "Ground water" means any water of the state occupying the voids within a geologic formation and within the zone of saturation.~~

~~(8)(7) "Interim numerical standard" means a health-based number that expresses the concentration of an agricultural chemical allowed in ground water and that is adopted by a rule of the board pursuant to 80-15-201(3) or (4).~~

~~(9)(8) "Margin of safety" means numerical margins that are applied to the no observable effect level in an agricultural chemical toxicology study and that are used by the EPA to extrapolate data obtained from studies of animals to humans, including sensitive individuals.~~

~~(10)(9) "No observable effect level" means the highest dose level of an agricultural chemical to which a laboratory animal is exposed, per unit of body weight, at which no effect is observed, as established by EPA's pesticide registration process.~~

~~(11)(10) "Nonpoint source" means a diffuse source of agricultural chemicals resulting from human activities over a relatively large area, the effects of which must normally be addressed or controlled by a management or conservation practice.~~

~~(12)(11) "Nonpromulgated federal standard" means a health advisory or a suggested no-adverse response level that is published but not promulgated by regulation by EPA and that is a suggested measure of the health risk represented by the concentration of an agricultural chemical in water.~~

~~(13)(12) "Numerical risk assessment" means a scientific procedure used to measure the statistical probability of human health risk associated with exposure to an agricultural chemical.~~

~~(14)(13) "Oncogenic potential" means the potential of an agricultural chemical to cause tumors in laboratory animals and the extrapolation of that potential to humans through use of statistical models and other evidence.~~

~~(15)(14) "Person" means any individual, group, firm, cooperative, corporation, association, partnership, political subdivision, state or federal government agency, or other organization or entity.~~

~~(16)(15) "Point of standards application" means the specific location in an aquifer where ground water quality and quantity are sampled, measured, evaluated, or otherwise used by either the department or the department of environmental quality to implement the provisions of this chapter.~~

~~(17)(16) "Point source" means a point source as defined in 75-5-103, including but not limited to chemical mixing, loading, and storage sites and sites of agricultural chemical spills.~~

~~(18)(17) "Promulgated federal standard" means an agricultural chemical maximum contaminant level as established under the federal Safe Drinking Water Act, a national primary drinking water standard, or an interim drinking water regulation or other EPA regulation based on federal law.~~

~~(19)(18) "Registrant" means a person as defined in 80-8-102 and 80-10-101.~~

~~(20)(19) "Standard" means the numerical value expressing the concentration of an agricultural chemical in ground water that, when exceeded, presents a potential human health risk over a lifetime of consumption and that is adopted by a rule of the board department of environmental quality as required by 80-15-201.~~

~~(21)(20) "Use" means any act of handling or release of an agricultural chemical or exposure of humans or the environment to an agricultural chemical, including but not limited to application, mixing, loading, storage, disposal, or transportation."~~

Section 157. Section 80-15-105, MCA, is amended to read:

1 **"80-15-105. Rulemaking.** (1) The ~~board~~ department of environmental quality, subject to the
2 provisions of 80-15-110, shall adopt rules for the administration of this chapter for which the ~~board and the~~
3 department of environmental quality ~~have~~ has responsibility. These rules must include but are not limited to:

4 (a) standards and interim numerical standards for agricultural chemicals in ground water as
5 authorized by 80-15-201;

6 (b) procedures for ground water monitoring as authorized by 80-15-202 and 80-15-203;

7 (c) field and laboratory operational quality assurance, quality control, and confirmatory procedures
8 that are authorized by 80-15-107, 80-15-202, and 80-15-203 and that may include, through adoption by
9 reference, procedures that have been established or approved by EPA for quality assurance and quality
10 control;

11 (d) standards for maintaining the confidentiality of data and information declared confidential by EPA
12 and the confidentiality of chemical registrant data and information protected from disclosure by federal or state
13 law as required by 80-15-108; and

14 (e) administrative civil penalties as authorized by 80-15-412.

15 (2) The department shall adopt rules necessary to carry out its responsibilities under this chapter.
16 These rules must include but are not limited to:

17 (a) procedures for ground water monitoring as authorized by 80-15-202 and 80-15-203;

18 (b) the content and procedures for development of agricultural chemical ground water management
19 plans, including the content of best management practices and best management plans, procedures for
20 obtaining comments from the department of environmental quality on the plans, and the adoption of completed
21 plans and plan modifications as authorized by 80-15-211 through 80-15-218;

22 (c) standards for maintaining the confidentiality of data and information declared confidential by EPA
23 and of chemical registrant data and information protected from disclosure by federal or state law as required by
24 80-15-108;

25 (d) field and laboratory operational quality assurance, quality control, and confirmatory procedures
26 that are authorized by 80-15-107, 80-15-202, and 80-15-203 and that may include, through adoption by
27 reference, procedures that have been established or approved by EPA for quality assurance and quality
28 control;

- (e) emergency procedures as authorized by 80-15-405;
- (f) procedures for issuance of compliance orders as authorized by 80-15-403; and
- (g) procedures for the assessment of administrative civil penalties as authorized by 80-15-412."

Section 158. Section 80-15-110, MCA, is amended to read:

"80-15-110. State regulations no more stringent than federal regulations or guidelines. (1) After April 14, 1995, except as provided in subsections (2) through (5) or unless required by state law, the ~~board~~ department of environmental quality may not adopt a rule to implement this chapter that is more stringent than the comparable federal regulations or guidelines that address the same circumstances. The ~~board~~ department of environmental quality may incorporate by reference comparable federal regulations or guidelines.

(2) The ~~board~~ department of environmental quality may adopt a rule to implement this chapter that is more stringent than comparable federal regulations or guidelines only if the ~~board~~ it makes a written finding after a public hearing and public comment and based on evidence in the record that:

(a) the proposed state standard or requirement protects public health or the environment of the state; and

(b) the state standard or requirement to be imposed can mitigate harm to the public health or environment and is achievable under current technology.

(3) The written finding must reference information and peer-reviewed scientific studies contained in the record that forms the basis for the ~~board's~~ conclusion. The written finding must also include information from the hearing record regarding the costs to the regulated community that are directly attributable to the proposed state standard or requirement.

(4) (a) A person affected by a rule of the ~~board~~ board of environmental review adopted after January 1, 1990, and before April 14, 1995, that that person believes to be more stringent than comparable federal regulations or guidelines may petition the ~~board~~ department of environmental quality -- board to review the rule. If the ~~board~~ department of environmental quality board determines that the rule is more stringent than comparable federal regulations or guidelines, the ~~board~~ it -- the department shall comply with this section by either revising the rule to conform to the federal regulations or guidelines or by making the written finding, as provided under subsection (2), within a reasonable period of time, not to exceed 12 months after receiving the

petition. A petition under this section does not relieve the petitioner of the duty to comply with the challenged rule. The ~~board~~ department of environmental quality board may charge a petition filing fee in an amount not to exceed \$250.

(b) A person may also petition the ~~board~~ department of environmental quality board for a rule review under subsection (4)(a) if the board ~~of environmental review~~ adopts adopted a rule after January 1, 1990, and before [the effective date of this act] in an area in which no federal regulations or guidelines existed and the federal government subsequently establishes comparable regulations or guidelines that are less stringent than the previously adopted board rule.

(5) This section does not apply to a rule adopted under the emergency rulemaking provisions of 2-4-303(1)."

Section 159. Section 80-15-201, MCA, is amended to read:

"80-15-201. Ground water standards. (1) The ~~board~~ department of environmental quality shall adopt standards and, as applicable, interim numerical standards for agricultural chemicals in ground water. The standards must be the same as any promulgated or nonpromulgated federal standard established by EPA, although the ~~board~~ department of environmental quality may determine, pursuant to the requirements of subsection (4), that an interim numerical standard different from either a promulgated or nonpromulgated federal standard is justified. Promulgated federal standards must receive preference. Except as provided in subsections (3) and (4), if more than one nonpromulgated federal standard exists for an agricultural chemical, the ~~board~~ department of environmental quality must adopt the most recently established nonpromulgated federal standard.

(2) The ~~board~~ department of environmental quality is not required to adopt a standard or interim numerical standard for each agricultural chemical registered in the state. The only standards and interim numerical standards required are for those agricultural chemicals:

- (a) that are addressed by promulgated and nonpromulgated federal standards;
- (b) the presence of which has been verified in ground water as provided in 80-15-202; or
- (c) that the department and the department of environmental quality predict may appear in ground water, in accordance with the procedures and determinations specified in 80-15-202 and 80-15-203.

(3) If a promulgated federal standard has not been adopted or a nonpromulgated federal standard has not been published for an agricultural chemical for which the ~~board~~department of environmental quality is required to establish a standard or interim numerical standard as specified in subsections (2)(b) and (2)(c), the department of environmental quality shall request EPA to establish a promulgated or nonpromulgated federal standard. If the department of environmental quality determines that EPA cannot comply with the request within 15 days, the ~~board~~department of environmental quality shall adopt an interim numerical standard, provided that the ~~board~~department of environmental quality shall review the interim numerical standard whenever EPA adopts a promulgated federal standard or publishes a nonpromulgated federal standard for the agricultural chemical in question.

(4) The ~~board~~department of environmental quality may adopt an interim numerical standard that is different from either a promulgated or nonpromulgated federal standard if there is significant new and relevant technical information available that is scientifically valid. The ~~board~~department of environmental quality shall review the interim numerical standard when EPA establishes or revises the promulgated or nonpromulgated federal standard for the agricultural chemical in question.

(5) The ~~board~~department of environmental quality shall consider the following in adopting any interim numerical standard under either subsection (3) or (4):

(a) effects on a person weighing 70 kilograms and drinking 2 liters of water per day over a lifetime; and

(b) EPA's conclusions regarding the no observable effect level, including the margin of safety identified by EPA, when scientific data indicates oncogenic potential for the agricultural chemical and EPA has determined that a numerical risk assessment is not justified, is inappropriate, or does not serve as the primary toxicological basis for regulation.

(6) Nothing in this section may interfere with the ~~board's~~department of environmental quality's responsibility to adopt rules and standards under Title 75, chapter 6."

Section 160. Section 82-4-102, MCA, is amended to read:

"82-4-102. Intent -- findings -- policy and purpose. (1) The legislature, mindful of its constitutional obligations under Article II, section 3, and Article IX of the Montana constitution, has enacted The Strip and

Underground Mine Siting Act. It is the legislature's intent that the requirements of this part provide adequate remedies for the protection of the environmental life support system from degradation and provide adequate remedies to prevent unreasonable depletion and degradation of natural resources.

(2) It is the policy of this state to provide adequate remedies for the protection of the environmental life support system from degradation and provide adequate remedies to prevent unreasonable depletion and degradation of natural resources.

(3) It is the purpose of this part:

(a) to vest in the department the authority to adopt rules and to review new strip-mine and new underground-mine site locations and reclamation plans and either approve or disapprove those locations and plans and to exercise general administration and enforcement of this part;

~~(b) to vest in the board the authority to adopt rules;~~

~~(c)~~(b) to satisfy the requirement of Article IX, section 2, of the constitution of this state that all lands disturbed by the taking of natural resources be reclaimed; and

~~(d)~~(c) to ensure that adequate information is available on areas proposed for strip mining or underground mining so that mining and reclamation plans may be properly formulated to accommodate areas that are suitable for strip mining or underground mining.

(4) This part is an exercise of the general police power to provide for the health and welfare of the people."

Section 161. ~~Section 82-4-103, MCA, is amended to read:~~

~~"82-4-103. Definitions. When used in this part, unless a different meaning clearly appears from the context, the following definitions apply:~~

~~(1) "Board" means the board of environmental review provided for in 2-15-3502.~~

~~(2)(1) "Department" means the department of environmental quality provided for in 2-15-3501.~~

~~(3)(2) "Mineral" means mineral as defined in 82-4-203.~~

~~(4)(3) "New mine" means a strip or underground mining operation proposed for an area of land that the department determines, because of distance from an existing strip-mine or underground-mine operation or their respective facilities or because of important differences in topography, soils, wildlife, geologic structure,~~

~~aquifers, or vegetation from an existing strip mine or underground mine operation, does not constitute an expansion of an existing operation.~~

~~(5)(4) "Operation" means all of the premises, facilities, railroad loops, roads, power lines, and equipment used in the process of producing and removing mineral from a designated strip mine or underground mine area.~~

~~(6)(5) "Operator" means a person who intends to operate a new strip mine or new underground mine involving the removal of more than 10,000 cubic yards of mineral or overburden.~~

~~(7)(6) "Person" means a person, partnership, corporation, association, or other legal entity or any political subdivision or agency of the state.~~

~~(8)(7) "Preparatory work" means all onsite disturbances, excluding prospecting, associated with the initiation of a new strip mine or underground mine, including but not limited to the construction of railroad spurs or loops, buildings to house mining operations, roads, storage and train load-out facilities, transmission lines, erection of draglines and loading shovels, and other associated facilities.~~

~~(9)(8) "Strip mining" means any part of the process followed in the production of mineral by the opencut method, including mining by the auger method or any similar method that penetrates a mineral deposit and removes mineral directly through a series of openings made by a machine that enters the deposit from a surface excavation or any other method or process in which the strata or overburden is removed or displaced in order to recover the mineral.~~

~~(10)(9) "Underground mining" means any part of the process that is followed in the production of a mineral and that uses vertical or horizontal shafts, slopes, drifts, or incline planes connected with excavations penetrating the mineral stratum or strata."~~

Section 162. Section 82-4-112, MCA, is amended to read:

"82-4-112. Administration. (1) The department shall:

(a) adopt, after an opportunity for a hearing, general rules pertaining to new strip mines and to new underground mines and preparatory work to accomplish the purposes of this part, rules regarding filing of reports, issuance of permits, and other matters of procedure and administration;

(a)(b) exercise general supervision, administration, and enforcement of this part and all rules and

1 orders adopted under this part;

2 ~~(b)(c)~~ issue orders requiring operators to adopt remedial measures necessary to comply with this part
3 and rules adopted under this part;

4 ~~(e)(d)~~ order the suspension of any permit for failure to comply with this part, any rule adopted under
5 this part, or a permit issued pursuant to this part;

6 ~~(d)(e)~~ issue an order revoking a permit when the requirements set forth by a notice of violation, order
7 of suspension, or order requiring remedial measures have not been complied with according to the terms in the
8 notice or order;

9 ~~(e)(f)~~ order the halting of any operation that is started without first having obtained a permit as
10 required by this part;

11 ~~(f)(g)~~ conduct investigations and inspections necessary to ensure compliance with this part; and

12 ~~(g)(h)~~ encourage and conduct investigations, research, experiments, and demonstrations and collect
13 and disseminate information relating to new strip mines, new underground mines, and reclamation of lands and
14 waters affected by preparatory work.

15 (2) The ~~board~~ department shall conduct hearings under this part."
16

17 **Section 163.** Section 82-4-123, MCA, is amended to read:

18 **"82-4-123. Permit fee and surety bond.** A fee of \$50 shall be paid before the mine-site location
19 permit required in this part may be issued. The operator shall also file with the department a bond payable to
20 the state of Montana with surety satisfactory to the department in the penal sum to be determined by the
21 department of not less than \$200 or more than \$10,000 for each acre or fraction thereof of the area of land to
22 be disturbed by preparatory work, with a minimum bond of \$5,000, conditioned upon the faithful performance of
23 the requirements set forth in this part and of the rules of the ~~board~~ department. In determining the amount of the
24 bond within the above limits, the department shall take into consideration the character and nature of the
25 surface and subsurface disturbances, the future suitable use of the land involved, and the cost of removing or
26 burying facilities, subsidence stabilization, water controls, backfilling, grading, topsoiling, and reclamation to be
27 required. Notwithstanding the above limits, the bond may not be less than the total estimated cost to the state
28 of completing the work described in the reclamation plan."

1

2 **Section 164.** Section 82-4-129, MCA, is amended to read:

3 **"82-4-129. Noncompliance -- suspension of permits.** (1) If any of the requirements of this part or
4 rules or orders of the department have not been complied with within the time limits set by the department or by
5 this part, the department shall serve a notice of noncompliance on the operator or, when necessary, the director
6 of the department shall order the suspension of a permit. The notice or order must be handed to the operator in
7 person or served by certified mail addressed to the permanent address shown on the application for a permit.
8 The notice of noncompliance or order of suspension must specify in what respects the operator has failed to
9 comply with this part or the rules or orders of the department and the board ~~and the board~~. If the operator has
10 not complied with the requirement set forth in the notice of noncompliance or order of suspension within time
11 limits set in the notice or order, the permit may be revoked by order of the ~~board~~ department board and the
12 performance bond forfeited to the department.

13 (2) Any additional strip-mining or underground-mining or mine-site location permits held by an
14 operator whose mine-site location permit has been revoked must be suspended, and the operator is not eligible
15 to receive another permit or to have the suspended permits reinstated until the operator has complied with all
16 the requirements of this part with respect to previous permits issued to the operator. An operator who has
17 forfeited a bond is not eligible to receive another permit unless the land for which the bond was forfeited has
18 been reclaimed without cost to the state or the operator has paid into the reclamation account a sum together
19 with the value of the bond the department finds adequate to reclaim the lands. The department may not issue
20 any additional permits to an operator who has repeatedly been in noncompliance or violation of this part."

21

22 **Section 165.** ~~Section 82-4-130, MCA, is amended to read:~~

23 ~~"82-4-130. Procedure for hearings. (1) A person aggrieved by a final decision of the department~~
24 ~~under this part may request a hearing before the board~~ department ~~by submitting a written request stating the~~
25 ~~reason for the request within 30 days after the department's decision.~~

26 ~~(2) The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4,~~
27 ~~part 6, apply to a hearing held under this part."~~

28

1 **Section 166.** ~~Section 82-4-203, MCA, is amended to read:~~

2 ~~"82-4-203. — Definitions. Unless the context requires otherwise, in this part, the following definitions~~
3 ~~apply:~~

4 ~~(1) — "Abandoned" means an operation in which a mineral is not being produced and that the~~
5 ~~department determines will not continue or resume operation.~~

6 ~~(2) — "Adjacent area" means the area outside the permit area where a resource or resources,~~
7 ~~determined in the context in which the term is used, are or could reasonably be expected to be adversely~~
8 ~~affected by proposed mining operations, including probable impacts from underground workings.~~

9 ~~(3) — (a) "Alluvial valley floor" means the unconsolidated stream-laid deposits holding streams where~~
10 ~~water availability is sufficient for subirrigation or flood irrigation agricultural activities.~~

11 ~~(b) — The term does not include upland areas that are generally overlain by a thin veneer of colluvial~~
12 ~~deposits composed chiefly of debris from sheet erosion and deposits by unconcentrated runoff or slope wash,~~
13 ~~together with talus, other mass movement accumulation, and windblown deposits.~~

14 ~~(4) — "Approximate original contour" means that surface configuration achieved by backfilling and~~
15 ~~grading of the mined area so that the reclaimed area, including any terracing or access roads, closely~~
16 ~~resembles the general surface configuration of the land prior to mining and blends into and complements the~~
17 ~~drainage pattern of the surrounding terrain, with all highwalls, spoil piles, and coal refuse piles eliminated, so~~
18 ~~that:~~

19 ~~(a) — the reclaimed terrain closely resembles the general surface configuration if it is comparable to the~~
20 ~~premine terrain. For example, if the area was basically level or gently rolling before mining, it should retain~~
21 ~~these features after mining, recognizing that rolls and dips need not be restored to their original locations and~~
22 ~~that level areas may be increased.~~

23 ~~(b) — the reclaimed area blends with and complements the drainage pattern of the surrounding area so~~
24 ~~that water intercepted within or from the surrounding terrain flows through and from the reclaimed area in an~~
25 ~~unobstructed and controlled manner;~~

26 ~~(c) — postmining drainage basins may differ in size, location, configuration, orientation, and density of~~
27 ~~ephemeral drainageways compared to the premining topography if they are hydrologically stable, soil erosion is~~
28 ~~controlled to the extent appropriate for the postmining land use, and the hydrologic balance is protected; and~~

~~(d) the reclaimed surface configuration is appropriate for the postmining land use.~~

~~(5) "Aquifer" means any geologic formation or natural zone beneath the earth's surface that contains or stores water and transmits it from one point to another in quantities that permit or have the potential to permit economic development as a water source.~~

~~(6) (a) "Area of land affected" means the area of land from which overburden is to be or has been removed and upon which the overburden is to be or has been deposited.~~

~~(b) The term includes:~~

~~(i) all land overlying any tunnels, shafts, or other excavations used to extract the mineral;~~

~~(ii) lands affected by the construction of new railroad loops and roads or the improvement or use of existing railroad loops and roads to gain access and to haul the mineral;~~

~~(iii) processing facilities at or near the mine site or other mine-associated facilities, waste deposition areas, treatment ponds, and any other surface or subsurface disturbance associated with strip mining or underground mining; and~~

~~(iv) all activities necessary and incident to the reclamation of the mining operations.~~

~~(7) "Bench" means the ledge, shelf, table, or terrace formed in the contour method of strip mining.~~

~~(8) "Board" means the board of environmental review provided for in 2-15-3502.~~

~~(9)(8) "Coal conservation plan" means the planned course of conduct of a strip or underground mining operation and includes plans for the removal and use of minable and marketable coal located within the area planned to be mined.~~

~~(10)(9) (a) "Coal preparation" means the chemical or physical processing of coal and its cleaning, concentrating, or other processing or preparation.~~

~~(b) The term does not mean the conversion of coal to another energy form or to a gaseous or liquid hydrocarbon, except for incidental amounts that do not leave the plant, nor does the term mean processing for other than commercial purposes.~~

~~(11)(10) "Coal preparation plant" means a commercial facility where coal is subject to coal preparation. The term includes commercial facilities associated with coal preparation activities but is not limited to loading buildings, water treatment facilities, water storage facilities, settling basins and impoundments, and coal processing and other waste disposal areas.~~

~~(12)(11) "Contour strip mining" means that strip-mining method commonly carried out in areas of rough and hilly topography in which the coal or mineral seam outcrops along the side of the slope and entrance are made to the seam by excavating a bench or table cut at and along the site of the seam outcropping, with the excavated overburden commonly being cast down the slope below the mineral seam and the operating bench.~~

~~(13)(12) "Cropland" means land used for the production of adapted crops for harvest, alone or in rotation with grasses and legumes, that include row crops, small grain crops, hay crops, nursery crops, orchard crops, and other similar crops.~~

~~(14)(13) "Degree" means a measurement from the horizontal. In each case, the measurement is subject to a tolerance of 5% error.~~

~~(15)(14) "Department" means the department of environmental quality provided for in 2-15-3501.~~

~~(16)(15) "Developed water resources" means land used for storing water for beneficial uses, such as stockponds, irrigation, fire protection, flood control, and water supply.~~

~~(17)(16) "Ephemeral drainageway" means a drainageway that flows only in response to precipitation in the immediate watershed or in response to the melting of snow or ice and is always above the local water table.~~

~~(18)(17) "Failure to conserve coal" means the nonremoval or nonuse of minable and marketable coal by an operation. However, the nonremoval or nonuse of minable and marketable coal that occurs because of compliance with reclamation standards established by the department is not considered failure to conserve coal.~~

~~(19)(18) "Fill bench" means that portion of a bench or table that is formed by depositing overburden beyond or downslope from the cut section as formed in the contour method of strip mining.~~

~~(20)(19) "Fish and wildlife habitat" means land dedicated wholly or partially to the production, protection, or management of species of fish or wildlife.~~

~~(21)(20) "Forestry" means land used or managed for the long-term production of wood, wood fiber, or wood-derived products.~~

~~(22)(21) "Grazing land" means land used for grasslands and forest lands where the indigenous vegetation is actively managed for livestock grazing or browsing or occasional hay production.~~

~~(23)(22) "Higher or better uses" means postmining land uses that have a higher economic value or noneconomic benefit to the landowner or the community than the premining land uses.~~

~~(24)(23) "Hydrologic balance" means the relationship between the quality and quantity of water inflow to, water outflow from, and water storage in a hydrologic unit, such as a drainage basin, aquifer, soil zone, lake, or reservoir, and encompasses the dynamic relationships among precipitation, runoff, evaporation, and changes in ground water and surface water storage.~~

~~(25)(24) "Imminent danger to the health and safety of the public" means the existence of any condition or practice or any violation of a permit or other requirement of this part in a strip- or underground-coal-mining and reclamation operation that could reasonably be expected to cause substantial physical harm to persons outside the permit area before the condition, practice, or violation can be abated. A reasonable expectation of death or serious injury before abatement exists if a rational person, subjected to the same conditions or practices giving rise to the peril, would not willingly be exposed to the danger during the time necessary for abatement.~~

~~(26)(25) "Industrial or commercial" means land used for:~~

~~(a) extraction or transformation of materials for fabrication of products, wholesaling of products, or long-term storage of products. This includes all heavy and light manufacturing facilities.~~

~~(b) retail or trade of goods or services, including hotels, motels, stores, restaurants, and other commercial establishments.~~

~~(27)(26) (a) "In situ coal gasification" means a method of in-place coal mining where limited quantities of overburden are disturbed to install a conduit or well and coal is mined by injecting or recovering a liquid, solid, sludge, or gas that causes the leaching, dissolution, gasification, liquefaction, or extraction of the coal.~~

~~(b) In situ coal gasification does not include the storage of carbon dioxide in a geologic storage reservoir, the primary or enhanced recovery of naturally occurring oil and gas, or any related process regulated by the board of oil and gas conservation pursuant to Title 82, chapter 11.~~

~~(28)(27) "Intermittent stream" means a stream or reach of a stream that is below the water table for at least some part of the year and that obtains its flow from both ground water discharge and surface runoff.~~

~~(29)(28) "Land use" means specific uses or management-related activities, rather than the vegetative cover of the land. Land uses may be identified in combination when joint or seasonal uses occur and may include land used for support facilities that are an integral part of the land use. Land use categories include cropland, developed water resources, fish and wildlife habitat, forestry, grazing land, industrial or commercial,~~

1 ~~pastureland, land occasionally cut for hay, recreation, or residential.~~

2 ~~(30)(29) "Marketable coal" means a minable coal that is economically feasible to mine and is fit for sale~~
3 ~~in the usual course of trade.~~

4 ~~(31)(30) "Material damage" means, with respect to protection of the hydrologic balance, degradation or~~
5 ~~reduction by coal mining and reclamation operations of the quality or quantity of water outside of the permit~~
6 ~~area in a manner or to an extent that land uses or beneficial uses of water are adversely affected, water quality~~
7 ~~standards are violated, or water rights are impacted. Violation of a water quality standard, whether or not an~~
8 ~~existing water use is affected, is material damage.~~

9 ~~(32)(31) "Method of operation" means the method or manner by which the cut, open pit, shaft, or~~
10 ~~excavation is made, the overburden is placed or handled, water is controlled, and other acts are performed by~~
11 ~~the operator in the process of uncovering and removing the minerals that affect the reclamation of the area of~~
12 ~~land affected.~~

13 ~~(33)(32) "Minaable coal" means that coal that can be removed through strip or underground mining~~
14 ~~methods adaptable to the location that coal is being mined or is planned to be mined.~~

15 ~~(34)(33) "Mineral" means coal and uranium.~~

16 ~~(35)(34) "Operation" means:~~

17 ~~(a) all of the premises, facilities, railroad loops, roads, and equipment used in the process of~~
18 ~~producing and removing mineral from and reclaiming a designated strip mine or underground mine area,~~
19 ~~including coal preparation plants; and~~

20 ~~(b) all activities, including excavation incident to operations, or prospecting for the purpose of~~
21 ~~determining the location, quality, or quantity of a natural mineral deposit.~~

22 ~~(36)(35) "Operator" means a person engaged in:~~

23 ~~(a) strip mining or underground mining who removes or intends to remove more than 10,000 cubic~~
24 ~~yards of mineral or overburden;~~

25 ~~(b) coal mining who removes or intends to remove more than 250 tons of coal from the earth by~~
26 ~~mining within 12 consecutive calendar months in any one location;~~

27 ~~(c) operating a coal preparation plant; or~~

28 ~~(d) uranium mining using in situ methods.~~

~~(37)(36) "Overburden" means:~~

~~(a) all of the earth and other materials that lie above a natural mineral deposit; and~~

~~(b) the earth and other material after removal from their natural state in the process of mining.~~

~~(38)(37) "Pastureland" means land used primarily for the long-term production of adapted, domesticated forage plants to be grazed by livestock or occasionally cut and cured for livestock feed.~~

~~(39)(38) "Perennial stream" means a stream or part of a stream that flows continuously during all of the calendar year as a result of ground-water discharge or surface runoff.~~

~~(40)(39) "Person" means a person, partnership, corporation, association, or other legal entity or any political subdivision or agency of the state or federal government.~~

~~(41)(40) "Prime farmland" means land that:~~

~~(a) meets the criteria for prime farmland prescribed by the United States secretary of agriculture in the Federal Register; and~~

~~(b) historically has been used for intensive agricultural purposes.~~

~~(42)(41) "Prospecting" means:~~

~~(a) the gathering of surface or subsurface geologic, physical, or chemical data by mapping, trenching, or geophysical or other techniques necessary to determine:~~

~~(i) the quality and quantity of overburden in an area; or~~

~~(ii) the location, quantity, or quality of a mineral deposit; or~~

~~(b) the gathering of environmental data to establish the conditions of an area before beginning strip- or underground coal-mining and reclamation operations under this part.~~

~~(43)(42) "Reclamation" means backfilling, subsidence stabilization, water control, grading, highwall reduction, topsoiling, planting, revegetation, and other work conducted on lands affected by strip mining or underground mining under a plan approved by the department to make those lands capable of supporting the uses that those lands were capable of supporting prior to any mining or to higher or better uses.~~

~~(44)(43) "Recovery fluid" means any material that flows or moves, whether in semisolid, liquid, sludge, gas, or some other form or state, used to dissolve, leach, gasify, or extract coal.~~

~~(45)(44) "Recreation" means land used for public or private leisure-time activities, including developed recreation facilities, such as parks, camps, and amusement areas, as well as areas for less intensive uses,~~

~~such as hiking, canoeing, and other undeveloped recreational uses.~~

~~(46)(45) "Reference area" means a land unit maintained under appropriate management for the purpose of measuring vegetation ground cover, productivity, and plant species diversity that are produced naturally or by crop production methods approved by the department. Reference areas must be representative of geology, soil, slope, and vegetation in the permit area.~~

~~(47)(46) "Remining" means conducting surface coal mining and reclamation operations that affect previously mined areas (for example, the recovery of additional mineral from existing gob or tailings piles).~~

~~(48)(47) "Residential" means land used for single and multiple family housing, mobile home parks, or other residential lodgings.~~

~~(49)(48) "Restore" or "restoration" means reestablishment after mining and reclamation of the land use that existed prior to mining or to higher or better uses.~~

~~(50)(49) (a) "Strip mining" means any part of the process followed in the production of mineral by the opencut method, including mining by the auger method or any similar method that penetrates a mineral deposit and removes mineral directly through a series of openings made by a machine that enters the deposit from a surface excavation or any other mining method or process in which the strata or overburden is removed or displaced in order to recover the mineral.~~

~~(b) For the purposes of this part only, strip mining also includes remining and coal preparation.~~

~~(c) The terms "remining" and "coal preparation" are not included in the definition of "strip mining" for purposes of Title 15, chapter 35, part 1.~~

~~(51)(50) "Subsidence" means a vertically downward movement of overburden materials resulting from the actual mining of an underlying mineral deposit or associated underground excavations.~~

~~(52)(51) "Surface owner" means:~~

~~(a) a person who holds legal or equitable title to the land surface;~~

~~(b) a person who personally conducts farming or ranching operations upon a farm or ranch unit to be directly affected by strip mining operations or who receives directly a significant portion of income from farming or ranching operations;~~

~~(c) the state of Montana when the state owns the surface; or~~

~~(d) the appropriate federal land management agency when the United States government owns the~~

1 ~~surface.~~

2 ~~(53)(52) "Topsoil" means the unconsolidated mineral matter that is naturally present on the surface of~~
3 ~~the earth, that has been subjected to and influenced by genetic and environmental factors of parent material,~~
4 ~~climate, macroorganisms and microorganisms, and topography, all acting over a period of time, and that is~~
5 ~~necessary for the growth and regeneration of vegetation on the surface of the earth.~~

6 ~~(54)(53) "Underground mining" means any part of the process that is followed in the production of a~~
7 ~~mineral and that uses vertical or horizontal shafts, slopes, drifts, or incline planes connected with excavations~~
8 ~~penetrating the mineral stratum or strata. The term includes mining by in situ methods.~~

9 ~~(55)(54) "Unwarranted failure to comply" means:~~

10 ~~(a) the failure of a permittee to prevent the occurrence of any violation of a permit or any requirement~~
11 ~~of this part because of indifference, lack of diligence, or lack of reasonable care; or~~

12 ~~(b) the failure to abate any violation of a permit or of this part because of indifference, lack of~~
13 ~~diligence, or lack of reasonable care.~~

14 ~~(56)(55) "Waiver" means a document that demonstrates the clear intention to release rights in the~~
15 ~~surface estate for the purpose of permitting the extraction of subsurface minerals by strip-mining methods.~~

16 ~~(57)(56) "Wildlife habitat enhancement feature" means a component of the reclaimed landscape,~~
17 ~~established in conjunction with land uses other than fish and wildlife habitat, for the benefit of wildlife species,~~
18 ~~including but not limited to tree and shrub plantings, food plots, wetland areas, water sources, rock outcrops,~~
19 ~~microtopography, or raptor perches.~~

20 ~~(58)(57) "Written consent" means a statement that is executed by the owner of the surface estate and~~
21 ~~that is written on a form approved by the department to demonstrate that the owner consents to entry of an~~
22 ~~operator for the purpose of conducting strip-mining operations and that the consent is given only to strip-mining~~
23 ~~and reclamation operations that fully comply with the terms and requirements of this part."~~

24
25 **Section 167.** Section 82-4-205, MCA, is amended to read:

26 **"82-4-205. Administration by department and board and board.** (1) The department shall adopt,
27 after an opportunity for a hearing, general rules pertaining to strip mining and to underground mining to
28 accomplish the purposes of this part. The department may adopt rules with respect to filing of reports, issuance

1 of permits, monitoring, and other matters of procedure and administration.

2 ~~(1)~~(2) The department:

3 (a) shall exercise general supervision, administration, and enforcement of this part and all rules and
4 orders adopted under this part;

5 (b) shall review for approval or disapproval all plans and specifications submitted by an operator for
6 the method of operation, subsidence stabilization, water control, backfilling, grading, highwall reduction, and
7 topsoiling and for the reclamation of the area of land affected by the operator's operation;

8 (c) shall issue orders requiring an operator to adopt the remedial measures necessary to comply with
9 this part and rules adopted under this part;

10 (d) shall order the suspension of any permit for failure to comply with this part or a rule adopted under
11 this part;

12 (e) shall issue an order revoking a permit when the requirements set forth by a notice of violation,
13 order of suspension, or order requiring remedial measures have not been complied with according to the terms
14 in the notice or order;

15 (f) shall order the halting of any operation that is started without first having obtained a permit as
16 required by this part or order the cessation of operations not in compliance with this part in accordance with 82-
17 4-251;

18 (g) shall conduct public hearings required under this part or rules adopted ~~by the board~~ pursuant to
19 this part;

20 (h) shall conduct investigations and inspections necessary to ensure compliance with this part;

21 ~~(i) shall conduct contested case hearings under this part; and~~

22 ~~(i)~~(i) may encourage and conduct investigations, research, experiments, and demonstrations and
23 collect and disseminate information relating to strip mining and to underground mining and reclamation of lands
24 and waters affected by strip mining and underground mining.

25 ~~(2) The board shall conduct contested case hearings under this part.~~

26 (2) The board shall conduct contested case hearings under this part."

27

28 **Section 168.** ~~Section 82-4-206, MCA, is amended to read:~~

~~"82-4-206. Procedure for contested case hearings. (1) An applicant, permittee, or person with an interest that is or may be adversely affected may request a hearing before the board department on any of the following decisions of the department by submitting a written request stating the reason for the request within 30 days after the department's decision:~~

~~(a) approval or denial of an application for a permit pursuant to 82-4-231;~~

~~(b) approval or denial of an application for a prospecting permit pursuant to 82-4-226;~~

~~(c) approval or denial of an application to increase or reduce a permit area pursuant to 82-4-225;~~

~~(d) approval or denial of an application to renew or revise a permit pursuant to 82-4-221; or~~

~~(e) approval or denial of an application to transfer a permit pursuant to 82-4-238 or 82-4-250.~~

~~(2) The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing before the board department under subsection (1)."~~

Section 169. Section 82-4-207, MCA, is amended to read:

"82-4-207. Rulemaking -- in situ coal gasification. (1) Within 1 year of October 1, 2011, and in accordance with subsection (3), the board department shall adopt rules necessary to regulate underground mining using in situ coal gasification.

(2) Unless required by this part, the board department may not adopt a rule to regulate in situ coal gasification that is more stringent than the comparable federal regulations or guidelines that address the same circumstances.

(3) The board department shall solicit, document, consider, and address comments from the board of oil and gas conservation provided for in 2-15-3303 in developing rules pursuant to subsection (1)."

Section 170. Section 82-4-223, MCA, is amended to read:

"82-4-223. Surety bond. (1) Before a permit may be issued, the operator shall file with the department a bond payable to the state of Montana with surety satisfactory to the department in an amount to be determined by the department of not less than \$200 for each acre or fraction of an acre of the area of land affected, with a minimum bond of \$10,000, conditioned upon the faithful performance of the requirements set forth in this part and of the rules of the board department. The operator may elect to deposit cash, negotiable

bonds, or negotiable certificates of deposit of any bank organized or transacting business in the United States. The cash deposit or market value of these securities must be equal to or greater than the amount of the bond required for the bonded area. The level of bonding must be relative to the degree of disturbance projected by the original permit and the annual report. A political subdivision or agency of the state need not file a bond unless required to do so by the department. The department shall adjust the amount of bond required if the cost of reclamation changes.

(2) In determining the amount of the bond, the department shall take into consideration the character and nature of the overburden, the future suitable use of the land involved, and the cost of backfilling, grading, highwall reduction, subsidence stabilization, water control, topsoiling, and reclamation to be required, but the bond may not be less than the total estimated cost to the state of completing the work described in the reclamation plan."

Section 171. Section 82-4-226, MCA, is amended to read:

"82-4-226. Prospecting permit. (1) Except as provided in subsection (7), prospecting by any person on land not included in a valid strip-mining or underground-mining permit is unlawful without possessing a valid prospecting permit issued by the department as provided in this section. A prospecting permit may not be issued until the person submits an application, the application is examined, amended if necessary, and approved by the department, and an adequate reclamation performance bond is posted, all of which prerequisites must be done in conformity with the requirements of this part.

(2) An application for a prospecting permit filed pursuant to subsection (1) must be made in writing, notarized, and submitted to the department upon forms prepared and furnished by it. The application must include among other things a prospecting map and a prospecting reclamation plan of substantially the same character as required for a surface-mining or underground-mining map and reclamation plan under this part. The department shall determine by rules the precise nature of the required prospecting map and reclamation plan. Any applicant who intends to prospect by means of core drilling shall specify the location and number of holes to be drilled, methods to be used in sealing aquifers, and other information that may be required by the department. The applicant shall state what types of prospecting and excavating techniques will be employed on the affected land. The application must also include any other or further information that the department may

1 require.

2 (3) Before the department gives final approval to the prospecting permit application, the applicant
3 shall file with the department a reclamation and revegetation bond in a form and in an amount as determined in
4 the same manner for strip-mining or underground-mining reclamation and revegetation bonds under this part.

5 (4) In the event that the holder of a prospecting permit desires to strip mine or underground mine the
6 area covered by the prospecting permit and has fulfilled all the requirements for a strip-mining or underground-
7 mining permit, the department may permit the postponement of the reclamation of the acreage prospected if
8 that acreage is incorporated into the complete reclamation plan submitted with the application for a strip-mining
9 or underground-mining permit. Any land actually affected by prospecting or excavating under a prospecting
10 permit and not covered by the strip-mining or underground-mining reclamation plan must be promptly
11 reclaimed.

12 (5) The prospecting permit is valid for 1 year and is subject to renewal, suspension, and revocation in
13 the same manner as strip-mining or underground-mining permits under this part.

14 (6) The holder of the prospecting permit shall file with the department the same progress reports,
15 maps, and revegetation progress reports as are required of strip-mining or underground-mining operators under
16 this part.

17 (7) (a) Prospecting that is not conducted in an area designated unsuitable for coal mining pursuant to
18 82-4-227 or 82-4-228, that is not conducted for the purpose of determining the location, quality, or quantity of a
19 mineral deposit, and that does not remove more than 250 tons of coal is not subject to subsections (1) through
20 (6). However, a person who conducts prospecting described in this subsection (7)(a) shall file with the
21 department a notice of intent to prospect that contains the information required by the department before
22 commencing prospecting operations. If this prospecting substantially disturbs the natural land surface, it must
23 be conducted in accordance with the performance standards of the ~~board's~~ department's rules regulating the
24 conduct and reclamation of prospecting operations that remove coal. The department may inspect these
25 prospecting and reclamation operations at any reasonable time.

26 (b) (i) Prospecting conducted to determine the location, quality, or quantity of coal outside an area
27 designated unsuitable that is not included in a valid strip-mining or underground-mining permit, that does not
28 substantially disturb the land surface, and that does not remove more than 250 tons of coal is not subject to

1 subsections (1) and (2) but may not be conducted without a valid prospecting permit issued pursuant to
2 subsection (8).

3 (ii) For purposes of this subsection (7)(b), the drilling of coal prospecting holes, the installation and use
4 of associated disposal pits, and the installation of ground water monitoring wells does not constitute substantial
5 disturbance.

6 (8) (a) An application for a coal prospecting permit required by subsection (7)(b) must contain:

7 (i) the name, address, and telephone number of the person who seeks to prospect;

8 (ii) the name, address, and telephone number of the person's representative who will be present at and
9 responsible for conducting the prospecting activities;

10 (iii) a narrative describing the proposed prospecting area or a map of the prospecting area at a scale of
11 1:24,000 or greater showing:

12 (A) the general location of drill holes and trenches;

13 (B) existing and proposed roads;

14 (C) occupied dwellings;

15 (D) topographic features;

16 (E) bodies of water; and

17 (F) pipelines;

18 (iv) a copy of the documents upon which the applicant bases its legal right to prospect, including
19 documentation that the owners of the land affected have been notified and understand that the department will
20 make investigations and inspections to ensure compliance;

21 (v) a statement of the period of intended prospecting; and

22 (vi) a description of the method of prospecting to be used and the practices that will be followed to
23 protect the environment and reclaim disturbed areas, including plugging of prospecting holes, in accordance
24 with rules adopted by the ~~board~~ department.

25 (b) Within 10 working days of receipt of an application, the department shall notify the applicant in
26 writing as to whether the application is complete and preliminarily acceptable. If the department determines that
27 the application is not complete or not preliminarily acceptable, the department shall include a detailed
28 identification of information necessary to cure the deficiency.

(c) Within 5 working days of receipt of the applicant's response to the identified deficiencies, the department shall review the response and notify the person as to whether the application is complete and preliminarily acceptable. If the department determines the application is not complete or preliminarily acceptable, the department shall notify the person in writing and include a detailed identification of information necessary to make the application complete and preliminarily acceptable.

(d) When the department determines that the application is complete and preliminarily acceptable, the department shall notify the applicant in writing. The notification must include the amount of bond that is required to be posted in order for the permit to be issued.

(e) Upon receipt of the department's determination of preliminary acceptability, the applicant shall place an advertisement in a newspaper of general circulation in the locality of the proposed prospecting. The notice must describe the application and a place in the locality where the public may examine the application and must notify the public that it may submit written comments by delivering or mailing them to the department within 10 days following publication of the notice.

(f) After close of the public comment period, the department shall notify the applicant as to whether the application is acceptable. The department shall issue the notification within 5 working days of the close of the comment period if no comments are received and within 10 working days if comments are received. In the notice of acceptability, the department shall notify the applicant of any adjustment in the amount of the bond.

(g) A permit issued pursuant to this subsection (8) is subject to subsections (3) through (6)."

Section 172. ~~Section 82-4-227, MCA, is amended to read:~~

~~"82-4-227. Refusal of permit—applicant violator system. (1) An application for a prospecting, strip-mining, or underground-mining permit or major revision may not be approved by the department unless, on the basis of the information set forth in the application, in an onsite inspection, and in an evaluation of the operation by the department, the applicant has affirmatively demonstrated that the requirements of this part and rules will be observed and that the proposed method of operation, backfilling, grading, subsidence stabilization, water control, highwall reduction, topsoiling, revegetation, or reclamation of the affected area can be carried out consistently with the purpose of this part. The applicant for a permit or major revision has the burden of establishing that the application is in compliance with this part and the rules adopted under it.~~

~~(2) The department may not approve the application for a prospecting, strip-mining, or underground-mining permit when the area of land described in the application includes land that has special, exceptional, critical, or unique characteristics or when mining or prospecting on that area would adversely affect the use, enjoyment, or fundamental character of neighboring land that has special, exceptional, critical, or unique characteristics. For the purposes of this part, land is defined as having these characteristics if it possesses special, exceptional, critical, or unique:~~

~~(a) biological productivity, the loss of which would jeopardize certain species of wildlife or domestic stock;~~

~~(b) ecological fragility, in the sense that the land, once adversely affected, could not return to its former ecological role in the reasonably foreseeable future;~~

~~(c) ecological importance, in the sense that the particular land has such a strong influence on the total ecosystem of which it is a part that even temporary effects felt by it could precipitate a systemwide reaction of unpredictable scope or dimensions; or~~

~~(d) scenic, historic, archaeologic, topographic, geologic, ethnologic, scientific, cultural, or recreational significance. In applying the provisions of this subsection (2)(d), particular attention should be paid to the inadequate preservation previously accorded Plains Indian history and culture.~~

~~(3) The department may not approve an application for a strip or underground coal-mining permit or major revision unless the application affirmatively demonstrates that:~~

~~(a) the assessment of the probable cumulative impact of all anticipated mining in the area on the hydrologic balance has been made by the department and the proposed operation of the mining operation has been designed to prevent material damage to the hydrologic balance outside the permit area; and~~

~~(b) the proposed strip or underground coal-mining operation would not:~~

~~(i) interrupt, discontinue, or preclude farming on alluvial valley floors that are irrigated or naturally subirrigated, excluding undeveloped rangelands that are not significant to farming on alluvial valley floors and excluding land about which the department finds that if any farming will be interrupted, discontinued, or precluded, it is of such small acreage as to be of negligible impact on the farm's agricultural production; or~~

~~(ii) materially damage the quantity or quality of water in surface water or underground water systems that supply the valley floors described in subsection (3)(b)(i).~~

~~(4) Subsection (3)(b) does not affect those strip or underground coal mining operations that in the year preceding the enactment of Public Law 95-87 produced coal in commercial quantities and were located within or adjacent to alluvial valley floors or had obtained specific permit approval by the department to conduct strip or underground coal mining operations within alluvial valley floors. If coal deposits are precluded from being mined under this subsection, the director of the department shall certify to the secretary of interior that the mineral owner or lessee may be eligible for participation in coal exchange programs pursuant to section 510(5) of Public Law 95-87.~~

~~(5) (a) If the area proposed to be mined contains prime farmland, the department may not grant a permit to mine coal on the prime farmland unless it finds in writing that the applicant:~~

~~(i) has the technological capability to restore the mined area, within a reasonable time, to levels of yield equivalent to or higher than nonmined prime farmland in the surrounding area under equivalent levels of management; and~~

~~(ii) can meet the soil reconstruction standards of 82-4-232(3).~~

~~(b) Nothing in this subsection (5) applies to a permit issued prior to August 3, 1977, or to any revisions or renewals of the permit or to any existing strip or underground mining operations for which a permit was issued prior to August 3, 1977.~~

~~(6) If the department finds that the overburden on any part of the area of land described in the application for a prospecting, strip mining, or underground mining permit is such that experience in the state with a similar type of operation upon land with similar overburden shows that substantial deposition of sediment in streambeds, subsidence, landslides, or water pollution cannot feasibly be prevented, the department shall delete that part of the land described in the application upon which the overburden exists. The burden is on the applicant to demonstrate that any area should not be deleted under this subsection.~~

~~(7) If the department finds that the operation will constitute a hazard to a dwelling, public building, school, church, cemetery, commercial or institutional building, public road, stream, lake, or other public property, the department shall delete those areas from the prospecting, strip mining, or underground mining permit application before it can be approved. Strip or underground coal mining may not be allowed:~~

~~(a) within 300 feet of an occupied dwelling, unless waived by the owner;~~

~~(b) within 300 feet of any public building, school, church, community, or institutional building, or public~~

1 park;

2 ~~(c) within 100 feet of a cemetery;~~

3 ~~(d) within 100 feet of the outside right-of-way line of any public road, except where mine access roads~~
4 ~~or haulage roads join the right-of-way line. The department may permit the roads to be relocated or the area~~
5 ~~affected to lie within 100 feet of the road if, after public notice and opportunity for public hearing in the locality, a~~
6 ~~written finding is made that the interests of the public and the landowners affected will be protected.~~

7 ~~(8) Strip-mining or underground-mining may not be conducted within 500 feet of active or abandoned~~
8 ~~underground mines in order to prevent breakthroughs and to protect health or safety of miners. However, the~~
9 ~~department shall permit an operator to mine near, through, or partially through an abandoned underground~~
10 ~~mine or closer to an active underground mine if:~~

11 ~~(a) the nature, timing, and sequencing of specific strip-mine activities and specific underground-mine~~
12 ~~activities are jointly approved by the department and the regulatory authority concerned with the health and~~
13 ~~safety of underground miners; and~~

14 ~~(b) the operations will result in improved resource recovery, abatement of water pollution, or~~
15 ~~elimination of hazards to the health and safety of the public.~~

16 ~~(9) The department may not approve an application for a strip or underground coal-mining operation~~
17 ~~if the area proposed to be mined is included:~~

18 ~~(a) within an area designated unsuitable for strip or underground coal mining; or~~

19 ~~(b) within an area under review for this designation under an administrative proceeding, unless in an~~
20 ~~area as to which an administrative proceeding has commenced pursuant to this part, the operator making the~~
21 ~~permit application demonstrates that prior to January 1, 1977, the operator made substantial legal and financial~~
22 ~~commitments in relation to the operation for which the operator is applying for a permit.~~

23 ~~(10) A permit or major permit revision for a strip or underground coal-mining operation may not be~~
24 ~~issued unless the applicant has affirmatively demonstrated by its coal conservation plan that failure to conserve~~
25 ~~coal will not occur. The department may require the applicant to submit any information it considers necessary~~
26 ~~for review of the coal conservation plan.~~

27 ~~(11) Whenever information available to the department indicates that a strip or underground coal-~~
28 ~~mining operation that is owned or controlled by the applicant or by any person who owns or controls the~~

~~applicant is currently in violation of Public Law 95-87, as amended, any state law required by Public Law 95-87, as amended, or any law, rule, or regulation of the United States or of any department or agency in the United States pertaining to air or water environmental protection, the department may not issue a strip—or underground coal mining permit or amendment, other than an incidental boundary revision, until the applicant submits proof that the violation has been corrected or is in the process of being corrected to the satisfaction of the administering agency.~~

~~(12) The department may not issue a strip—or underground coal mining permit or amendment, other than an incidental boundary revision, to any applicant that it finds, after an opportunity for hearing, owns or controls any strip—or underground coal mining operation that has demonstrated a pattern of willful violations of Public Law 95-87, as amended, or any state law required by Public Law 95-87, as amended, when the nature and duration of the violations and resulting irreparable damage to the environment indicate an intent not to comply with the provisions of this part.~~

~~(13) Subject to valid existing rights, no strip—or underground coal mining operations except those that existed as of August 3, 1977, may be conducted:~~

~~(a) on lands within the boundaries of units of the national park system, the national wildlife refuge system, the national wilderness preservation system, the national system of trails, the wild and scenic rivers system, including study rivers designated under section 5(a) of the Wild and Scenic Rivers Act or study rivers or study river corridors established in any guidelines issued under that act, or national recreation areas designated by an act of congress; or~~

~~(b) on any federal lands within national forests, subject to the exceptions and limitations of 30 CFR 761.11(b) and the procedures of 30 CFR 761.13.~~

~~(14) (a) A person who is listed by the department in the applicant violator system maintained by the office of surface mining reclamation and enforcement of the U.S. department of the interior pursuant to the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201, et seq., as owning or controlling a strip-mining or underground mining operation may challenge the ownership or control listing by filing a written request with the department for review of the listing. In the request, the person must include a written explanation of the basis for the challenge and any evidence the person wishes the department to consider. The department shall provide a written response within 60 days of receipt of the request for review.~~

~~(b) Within 30 days of receipt of the response pursuant to subsection (14)(a), the person who is listed may request a hearing before the board department by submitting to the board department a written request for hearing that states the reason for the request. The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to the hearing."~~

Section 173. Section 82-4-231, MCA, is amended to read:

"82-4-231. Submission of and action on reclamation plan. (1) As rapidly, completely, and effectively as the most modern technology and the most advanced state of the art will allow, each operator granted a permit under this part shall reclaim and revegetate the land affected by the operation, except that underground tunnels, shafts, or other subsurface excavations need not be revegetated. Under the provisions of this part and rules adopted by the ~~board~~ department, an operator shall prepare and carry out a method of operation, a plan of grading, backfilling, highwall reduction, subsidence stabilization, water control, and topsoiling and a reclamation plan for the area of land affected by the operation. In developing a method of operation and plans of grading, backfilling, highwall reduction, subsidence stabilization, water control, topsoiling, and reclamation, all measures must be taken to eliminate damages to landowners and members of the public, their real and personal property, public roads, streams, and all other public property from soil erosion, subsidence, landslides, water pollution, and hazards dangerous to life and property.

(2) The reclamation plan must set forth in detail the manner in which the applicant intends to comply with 82-4-232 through 82-4-234 and this section and the steps to be taken to comply with applicable air and water quality laws and rules and any applicable health and safety standards.

(3) The application for a permit or major revision of a permit, which must contain the reclamation plan, must be submitted to the department.

(4) The department shall determine whether the application is administratively complete. An application is administratively complete if it contains information addressing each application requirement in 82-4-222 and the rules implementing that section and all information necessary to initiate processing and public review. The department shall notify the applicant in writing of its determination no later than 90 days after submittal of the application. If the department determines that the application is not administratively complete, it shall specify in the notice those items that the application must address. The application is presumed

1 administratively complete as to those requirements not specified in the notice.

2 (5) If the department determines that an environmental impact statement on the application is
3 required, it shall notify the applicant in writing at the same time it gives the applicant notice pursuant to
4 subsection (4).

5 (6) After the applicant receives notice that the application is administratively complete, the applicant
6 shall publish notice of filing of the application once a week for 4 consecutive weeks in a newspaper of general
7 circulation in the locality of the proposed operation. The department shall notify various local governmental
8 bodies, planning agencies, sewage and water treatment authorities, and water companies in the locality in
9 which the proposed mining will take place of the application and provide a reasonable time for them to submit
10 written comments. Any person having an interest that is or may be adversely affected or the officer or head of
11 any federal, state, or local governmental agency or authority may file written objections to the proposed initial or
12 revised application for permit or major revision within 30 days of the applicant's published notice. If written
13 objections are filed and an objector requests an informal conference, the department shall hold an informal
14 conference in the locality of the proposed operation within 30 days of receipt of the request. The department
15 shall notify the applicant and all parties to the informal conference of its decision and the reasons for its
16 decision within 60 days of the informal conference. The department may arrange with the applicant upon
17 request by any party to the administrative proceeding for access to the proposed mining area for the purpose of
18 gathering information relevant to the proceeding.

19 (7) The filing of written objections or a request for an informal conference may not preclude the
20 department from proceeding with its review of the application as specified in subsection (8).

21 (8) (a) The department shall review each administratively complete application and determine the
22 acceptability of the application. During the review, the department may propose modifications to the application
23 or delete areas from the application in accordance with the requirements of 82-4-227. A complete application is
24 considered acceptable when the application is in compliance with all of the applicable requirements of this part
25 and the regulatory program pursuant to this part.

26 (b) If the applicant significantly modifies the application after the application has been determined
27 administratively complete in accordance with subsection (4), the department shall under this section either deny
28 the application or conduct a new review, including an administrative completeness determination, public notice,

1 and objection period.

2 (c) If an environmental impact statement is determined to be necessary prior to making a permit
3 decision, the department shall complete and publish the final environmental impact statement at least 15 days
4 prior to the date of issuance of the written findings pursuant to subsection (8)(f).

5 (d) Except as provided in 75-1-205(4) and 75-1-208(4)(b), within 120 days after it determines that an
6 application is administratively complete, the department shall notify the applicant in writing whether the
7 application is or is not acceptable. If the application is not acceptable, the department shall set forth the reasons
8 why it is not acceptable, and it may propose modifications, delete areas, or reject the entire application. All
9 items not specified as unacceptable in the department's notification are presumed to be acceptable. Except as
10 provided in 75-1-208(4)(b), if the applicant revises the application in response to a notice of unacceptability, the
11 department shall review the revised application and notify the applicant in writing within 120 days of the date of
12 receipt whether the revised application is acceptable. If the revision constitutes a significant modification under
13 subsection (8)(b), the department shall conduct a new review, beginning with an administrative completeness
14 determination.

15 (e) When the application is determined to be acceptable, the department shall publish notice of its
16 determination once a week for 2 consecutive weeks in a newspaper of general circulation in the locality of the
17 proposed operation. Any person having an interest that is or may be adversely affected may file a written
18 objection to the determination within 10 days of the department's last published notice. If a written objection is
19 filed and an objector requests an informal conference, the department shall hold an informal conference in the
20 locality of the proposed operation within 20 days of receipt of the request. The department shall notify the
21 applicant and all parties to the informal conference of its decision and the reasons for the decision within 10
22 days of the informal conference.

23 (f) Except as provided in 75-1-205(4) and 75-1-208(4)(b), the department shall prepare written
24 findings granting or denying the permit or major revision application in whole or in part not later than 45 days
25 from the date the application is determined acceptable. However, if lands subject to the federal lands program
26 are included in the application for permit or major revision, the department shall prepare and submit written
27 findings to the federal regulatory authority. If the department's decision is to grant the permit, the department
28 shall issue the permit on the date of its written finding or, if any federal concurrence is necessary, on the date

1 when the concurrence is obtained. If the application is denied, specific reasons for the denial must be set forth
2 in the written notification to the applicant.

3 (g) If the department fails to act within the times specified in this subsection (8), it shall immediately
4 ~~notify the board~~ record- notify the board in writing of its failure to comply and the reasons for the failure to
5 comply.

6 (9) The applicant, a landowner, or any person with an interest that is or may be adversely affected by
7 the department's permit decision may within 30 days of that decision submit a written notice requesting a
8 hearing. The notice must contain the grounds upon which the requester contends that the decision is in error.

9 The hearing must be started within 30 days of the request. For purposes of a hearing, the ~~board~~ department
10 board or its hearings officer may order site inspections of the area pertinent to the application. The ~~board~~
11 department board shall within 20 days of the hearing notify the person who requested the hearing, by certified
12 mail, and all other persons, by regular mail, of the findings and decisions. A person who presided at the
13 informal conference may not preside at the hearing or participate in the decision.

14 (10) In addition to the method of operation, grading, backfilling, highwall reduction, subsidence
15 stabilization, water control, topsoiling, and reclamation requirements of this part and rules adopted under this
16 part, the operator, consistent with the directives of subsection (1), shall:

17 (a) bury under adequate fill all toxic materials, shale, mineral, or any other material determined by the
18 department to be acid-producing, toxic, undesirable, or creating a hazard;

19 (b) as directed by rules, seal off tunnels, shafts, or other openings or any breakthrough of water
20 creating a hazard;

21 (c) impound, drain, or treat all runoff or underground mine waters so as to reduce soil erosion,
22 damage to grazing and agricultural lands, and pollution of surface and subsurface waters;

23 (d) remove or bury all metal, lumber, and other refuse resulting from the operation;

24 (e) use explosives in connection with the operation only in accordance with department regulations
25 designed to minimize noise, damage to adjacent lands, and water pollution and ensure public safety and for
26 other purposes;

27 (f) adopt measures to prevent land subsidence unless the department approves a plan for inducing
28 subsidence into an abandoned operation in a predictable and controlled manner, with measures for grading,

1 topsoiling, and revegetating the subsided land surface. In order for a controlled subsidence plan to be
2 approved, the applicant is required to show that subsidence will not cause a direct or indirect hazard to any
3 public or private buildings, roads, facilities, or use areas, constitute a hazard to human life or health or to
4 domestic livestock or a viable agricultural operation, or violate any other restrictions the department may
5 consider necessary.

6 (g) stockpile and protect from erosion all mining and processing wastes until these wastes can be
7 disposed of according to the provisions of this part;

8 (h) deposit as much stockpiled waste material as possible back into the mine voids upon
9 abandonment in a manner that will prevent or minimize land subsidence. The remaining waste material must be
10 disposed of as provided by this part and the rules of the ~~board~~ department.

11 (i) seal all portals, entryways, drifts, shafts, or other openings between the surface and underground
12 mine workings when no longer needed;

13 (j) to the extent possible using the best technology currently available, minimize disturbances and
14 adverse impacts of the operation on fish, wildlife, and related environmental values and achieve enhancement
15 of those resources when practicable;

16 (k) minimize the disturbances to the prevailing hydrologic balance at the mine site and in adjacent
17 areas and to the quality and quantity of water in surface water and ground water systems both during and after
18 strip- or underground-coal-mining operations and during reclamation by:

19 (i) avoiding acid or other toxic mine drainage by measures including but not limited to:

20 (A) preventing or removing water from contact with toxic-producing deposits;

21 (B) treating drainage to reduce toxic content that adversely affects downstream water upon being
22 released to watercourses;

23 (C) casing, sealing, or otherwise managing boreholes, shafts, and wells and keeping acid or other
24 toxic drainage from entering ground and surface waters;

25 (ii) (A) conducting strip- or underground-mining operations so as to prevent, to the extent possible
26 using the best technology currently available, additional contributions of suspended solids to streamflow or
27 runoff outside the permit area, but the contributions may not be in excess of requirements set by applicable
28 state or federal law;

(B) constructing any siltation structures pursuant to subsection (10)(k)(ii)(A) prior to commencement of strip- or underground-mining operations, with the structures to be certified by a qualified registered engineer and to be constructed as designed and as approved in the reclamation plan;

(iii) cleaning out and removing temporary or large settling ponds or other siltation structures from drainways after disturbed areas are revegetated and stabilized and depositing the silt and debris at a site and in a manner approved by the department;

(iv) restoring recharge capacity of the mined area to approximate premining conditions;

(v) avoiding channel deepening or enlargement in operations that requires the discharge of water from mines;

(vi) preserving throughout the mining and reclamation process the essential hydrologic functions of alluvial valley floors in the arid and semiarid areas of the country;

(vii) designing and constructing reclaimed channels of intermittent streams and perennial streams to ensure long-term stability; and

(viii) any other actions that the department may prescribe;

(l) conduct strip- or underground-mine operations in accordance with the approved coal conservation plan;

(m) stabilize and protect all surface areas, including spoil piles, to effectively control air pollution;

(n) seal all auger holes with an impervious and noncombustible material in order to prevent drainage except when the department determines that the resulting impoundment of water in the auger holes may create a hazard to the environment or the public health and safety;

(o) develop contingency plans to prevent sustained combustion;

(p) refrain from construction of roads or other access ways up a streambed or drainage channel or in proximity to the channel so as to seriously alter the normal flow of water;

(q) meet other criteria that are necessary to achieve reclamation in accordance with the purposes of this part, taking into consideration the physical, climatological, and other characteristics of the site;

(r) with regard to underground mines, eliminate fire hazards and otherwise eliminate conditions that constitute a hazard to health and safety of the public;

(s) locate openings for all new drift mines working acid-producing or iron-producing coal seams in a

1 manner that prevents a gravity discharge of water from the mine.

2 (11) An operator may not throw, dump, pile, or permit the throwing, dumping, or piling or otherwise
3 placing of any overburden, stones, rocks, mineral, earth, soil, dirt, debris, trees, wood, logs, or any other
4 materials or substances of any kind or nature beyond or outside of the area of land that is under permit and for
5 which a bond has been posted under 82-4-223 or place the materials described in this section in a way that
6 normal erosion or slides brought about by natural physical causes will permit the materials to go beyond or
7 outside of that area of land. An operator shall conduct the strip- or underground-mining operation in a manner
8 that protects areas outside the permit area."

9

10 **Section 174.** Section 82-4-232, MCA, is amended to read:

11 **"82-4-232. Area mining required -- bond -- alternative plan.** (1) (a) Area strip mining, a method of
12 operation that does not produce a bench or fill bench, is required where strip mining is proposed. The area of
13 land affected must be backfilled and graded to the approximate original contour of the land. However:

14 (i) consistent with the adjacent unmined landscape elements, the operator may propose and the
15 department may approve regraded topography gentler than premining topography in order to enhance the
16 postmining land use and develop a postmining landscape that will provide greater moisture retention, greater
17 stability, and reduced soil losses from runoff and erosion;

18 (ii) postmining slopes may not exceed the angle of repose or lesser slope as is necessary to achieve a
19 long-term static safety factor of 1.3 or greater and to prevent slides;

20 (iii) permanent impoundments may be approved if they are suitable for the postmining land use and
21 otherwise meet the requirements of this part, as provided by ~~board~~department rules; and

22 (iv) reclaimed topography must be suitable for the approved postmining land use.

23 (b) Spoil from the first cut is not required to be transported to the last cut if highwalls are eliminated,
24 box cut spoils are graded to blend in with the surrounding terrain, and the approximate original contour of the
25 land is achieved.

26 (c) When directed by the department, the operator shall construct in the final grading diversion
27 ditches, depressions, or terraces that will accumulate or control the water runoff.

28 (2) In addition to the backfilling and grading requirements, the operator's method of operation on

steep slopes may be regulated and controlled according to rules adopted by the ~~board~~ department. These rules may require any measure to accomplish the purpose of this part.

(3) For coal mining on prime farmlands, the ~~board~~ department shall establish by rule specifications for soil removal, storage, replacement, and reconstruction, and the operator must as a minimum be required to:

(a) (i) segregate the A horizon of the natural soil, except when it can be shown that other available soil materials will create a final soil having a greater productive capacity; and

(ii) if not used immediately, stockpile this material separately from other spoil and provide needed protection from wind and water erosion or contamination by other acid or toxic material;

(b) (i) segregate the B horizon of the natural soil, or underlying C horizon or other strata, or a combination of the horizons or other strata that are shown to be both texturally and chemically suitable for plant growth and that can be shown to be equally or more favorable for plant growth than the B horizon in sufficient quantities to create in the regraded final soil a root zone of comparable depth and quality to that that existed in the natural soil; and

(ii) if not used immediately, stockpile this material separately from other spoil and provide needed protection from wind and water erosion or contamination by acid or toxic material;

(c) replace and regrade the root zone material described in subsection (3)(b) with proper compaction and uniform depth over the regraded spoil material; and

(d) redistribute and grade in a uniform manner the surface soil horizon described in subsection (3)(a).

(4) All available topsoil must be removed in a separate layer, guarded from erosion and pollution, and kept in a condition so that it can sustain vegetation of at least the quality and variety it sustained prior to removal. However, the operator shall accord substantially the same treatment to any subsurface deposit of material that is capable, as determined by the department, of supporting surface vegetation virtually as well as the present topsoil. After the operation has been backfilled and graded, the topsoil or the best available subsurface deposit of material that is best able to support vegetation must be returned as the top layer.

(5) As determined by rules of the ~~board~~ department, time limits must be established requiring backfilling, grading, subsidence stabilization, water control, highwall reduction, topsoiling, planting, and revegetation to be kept current. All backfilling, subsidence stabilization, sealing, grading, and topsoiling must be completed before necessary equipment is moved from the operation.

(6) (a) The permittee may file an application with the department for the release of all or part of a performance bond. The application must contain a proposed public notice of the precise location of the land affected, the number of acres for which bond release is sought, the permit and the date approved, the amount of the bond filed and the portion sought to be released, the type and appropriate dates of reclamation work performed, and a description of the results achieved as they relate to the permittee's approved reclamation plan. In addition, as part of any bond release application, the permittee shall submit copies of letters that the permittee has sent to adjoining property owners, local governmental bodies, planning agencies, and sewage and water treatment authorities or water companies in the locality of the operation, notifying them of the permittee's intention to seek release from the bond.

(b) The department shall determine whether the application is administratively complete. An application is administratively complete if it includes:

- (i) the location and acreage of the land for which bond release is sought;
- (ii) the amount of bond release sought;
- (iii) a description of the completed reclamation, including the date of performance;
- (iv) a discussion of how the results of the completed reclamation satisfy the requirements of the approved reclamation plan; and
- (v) information required by rules implementing this part.

(c) The department shall notify the applicant in writing of its determination no later than 60 days after submittal of the application. If the department determines that the application is not administratively complete, it shall specify in the notice those items that the application must address. After an application for bond release has been determined to be administratively complete by the department, the permittee shall publish a public notice that has been approved as to form and content by the department at least once a week for 4 successive weeks in a newspaper of general circulation in the locality of the mining operation.

(d) Any person with a valid legal interest that might be adversely affected by the release of a bond or the responsible officer or head of any federal, state, or local governmental agency that has jurisdiction by law or special expertise with respect to any environmental, social, or economic impact involved in the operation or is authorized to develop and enforce environmental standards with respect to the operation may file written objections to the proposed release of bond to the department within 30 days after the last publication of the

1 notice. If written objections are filed and a hearing is requested, the department shall hold a public hearing in
2 the locality of the operation proposed for bond release or in Helena, at the option of the objector, within 30 days
3 of the request for hearing. The department shall inform the interested parties of the time and place of the
4 hearing. The date, time, and location of the public hearing must be advertised by the department in a
5 newspaper of general circulation in the locality for 2 consecutive weeks. Within 30 days after the hearing, the
6 department shall notify the permittee and the objector of its final decision.

7 (e) Without prejudice to the rights of the objector or the permittee or the responsibilities of the
8 department pursuant to this section, the department may establish an informal conference to resolve written
9 objections.

10 (f) For the purpose of the hearing under subsection (6)(d), the department may administer oaths,
11 subpoena witnesses or written or printed materials, compel the attendance of witnesses or the production of
12 materials, and take evidence, including but not limited to conducting inspections of the land affected and other
13 operations carried on by the permittee in the general vicinity. A verbatim record of each public hearing required
14 by this section must be made, and a transcript must be made available on the motion of any party or by order of
15 the department.

16 (g) If the applicant significantly modifies the application after the application has been determined to
17 be administratively complete, the department shall conduct a new review, including an administrative
18 completeness determination. A significant modification includes but is not limited to:

19 (i) the notification of an additional property owner, local governmental body, planning agency, or
20 sewage and water treatment authority of the permittee's intention to seek a bond release;

21 (ii) a material increase in the acreage for which a bond release is sought or in the amount of bond
22 release sought; or

23 (iii) a material change in the reclamation for which a bond release is sought or the information used to
24 evaluate the results of that reclamation.

25 (h) The department shall, within 30 days of determining that the application is administratively
26 complete or as soon as weather permits, conduct an inspection and evaluation of the reclamation work
27 involved. In the evaluation, the department shall consider, among other things, the degree of difficulty in
28 completing any remaining reclamation, whether pollution of surface and subsurface water is occurring, the

1 probability of continuance or future occurrence of the pollution, and the estimated cost of abating the pollution.

2 (i) The department shall review each administratively complete application to determine the
3 acceptability of the application. A complete application is acceptable if the application is in compliance with all
4 of the applicable requirements of this part, the rules adopted under this part, and the permit.

5 (j) (i) The department shall notify the applicant in writing regarding the acceptability of the application
6 no later than 60 days from the date of the inspection.

7 (ii) If the department determines that the application is not acceptable, it shall specify in the notice
8 those items that the application must address.

9 (iii) If the applicant revises the application in response to a notice of unacceptability, the department
10 shall review the revised application and notify the applicant in writing within 60 days of the date of receipt as to
11 whether the revised application is acceptable.

12 (iv) If the revision constitutes a significant modification, the department shall conduct a new review,
13 beginning with an administrative completeness determination.

14 (v) A significant modification includes but is not limited to:

15 (A) the notification of an additional property owner, local governmental body, planning agency, or
16 sewage and water treatment authority of the permittee's intention to seek a bond release;

17 (B) a material increase in the acreage for which a bond release is sought or the amount of bond
18 release sought; or

19 (C) a material change in the reclamation for which a bond release is sought or the information used to
20 evaluate the results of that reclamation.

21 (k) The department shall release the bond in whole or in part if it is satisfied the reclamation covered
22 by the bond or portion of the bond has been accomplished as required by this part according to the following
23 schedule:

24 (i) When the permittee completes the plugging, backfilling, regrading, and drainage control of a
25 bonded area in accordance with the approved reclamation plan, the department shall release 60% of the bond
26 or collateral for the applicable permit area.

27 (ii) After revegetation has been established on the regraded lands in accordance with the approved
28 reclamation plan, the department shall, for the period specified for operator responsibility of reestablishing

1 revegetation, retain that amount of bond for the revegetated area that would be sufficient for a third party to
2 cover the cost of reestablishing revegetation. Whenever a silt dam is to be retained as a permanent
3 impoundment, the portion of bond may be released under this subsection (6)(k)(ii) if provisions for sound future
4 maintenance by the operator or the landowner have been made with the department. Any part of the bond may
5 not be released under this subsection (6)(k)(ii):

6 (A) as long as the lands to which the release would be applicable are contributing suspended solids to
7 streamflow or runoff outside the permit area in excess of the requirements of 82-4-231(10)(k); or

8 (B) before soil productivity for prime farm lands to which the release would be applicable has returned
9 to equivalent levels of yield as nonmined land of the same soil type in the surrounding area under equivalent
10 management practices, as determined from the soil survey.

11 (iii) When the permittee has successfully completed all prospecting, mining, and reclamation activities,
12 the department shall release the remaining portion of the bond, but not before the expiration of the period
13 specified for responsibility and not until all reclamation requirements of this part are fully met.

14 (l) If the department disapproves the application for release of the bond or a portion of the bond, it
15 shall:

16 (i) provide to the permittee detailed written findings demonstrating that the reclamation covered by the
17 bond or a portion of the bond has not been accomplished as required by this part; and

18 (ii) recommend corrective actions necessary to secure the release and allowing opportunity for a public
19 hearing.

20 (m) When an application for total or partial bond release is filed with the department, it shall notify the
21 municipality or county in which a prospecting or mining operation is located by certified mail at least 30 days
22 prior to the release of all or a portion of the bond.

23 (7) All disturbed areas must be reclaimed in a timely manner to conditions that are capable of
24 supporting the land uses that they were capable of supporting prior to any mining or to higher or better uses as
25 approved pursuant to subsection (8).

26 (8) (a) An operator may propose a higher or better use as an alternative postmining land use. If the
27 landowner is not the operator, the operator shall submit written documentation of the concurrence of the
28 landowner or the land management agency with jurisdiction over the land. The department may approve the

1 proposed alternative postmining land use only if it meets all of the following criteria:

2 (i) There is a reasonable likelihood for achievement of the alternative land use.

3 (ii) The alternative land use does not present any actual or probable hazard to the public health or
4 safety or any threat of water diminution or pollution.

5 (iii) The alternative land use will not:

6 (A) be impractical or unreasonable;

7 (B) be inconsistent with applicable land use policies or plans;

8 (C) involve unreasonable delay in implementation; or

9 (D) cause or contribute to violation of federal, state, or local law.

10 (b) As used in this section, the term "landowner" includes a person who has sold the surface estate to
11 the operator with an option to repurchase the surface estate after mining and reclamation are complete.

12 (9) The reclamation plan must incorporate appropriate wildlife habitat enhancement features that are
13 integrated with cropland, grazing land, pastureland, land occasionally cut for hay, or other uses in order to
14 enhance habitat diversity, with emphasis on big game animals, game birds, and threatened and endangered
15 species that have been documented to live in the area of land affected, and to enhance wetlands and riparian
16 areas along rivers and streams and bordering ponds and lakes. Incorporation of wildlife habitat enhancement
17 features does not constitute a change in land use to fish and wildlife habitat and may not interfere with the
18 designated land use.

19 (10) Facilities existing prior to mining, including but not limited to public roads, utility lines, railroads, or
20 pipelines, may be replaced as part of the reclamation plan."

21

22 **Section 175.** Section 82-4-234, MCA, is amended to read:

23 **"82-4-234. Commencement of reclamation.** The operator shall commence the reclamation of the
24 area of land affected by the operator's operation as soon as possible after the beginning of strip mining or
25 underground mining of that area in accordance with plans previously approved by the department. Those
26 grading, backfilling, subsidence stabilization, topsoiling, and water management practices that are approved in
27 the plans must be kept current with the operation as defined by rules of the ~~board~~ department, and a permit or
28 supplement to a permit may not be issued if, in the discretion of the department, these practices are not

1 current."

2

3 **Section 176.** Section 82-4-235, MCA, is amended to read:

4 **"82-4-235. Determination of successful revegetation -- final bond release.** (1) Success of
5 revegetation must be judged on the effectiveness of the vegetation for the approved postmining land use, the
6 extent of cover compared to the cover occurring in the natural vegetation, and the requirements of 82-4-233.
7 Standards for success are:

8 (a) for areas reclaimed for use as cropland, crop production must be at least equal to that achieved
9 prior to mining based on comparison with historical data, comparable reference areas, or United States
10 department of agriculture publications applicable to the area of the operation, as referenced in rules adopted by
11 the ~~board~~ department;

12 (b) for areas reclaimed for use as pastureland or grazing land, the ground cover and production of
13 living plants on the revegetated area must be at least equal to that of a reference area or other standard
14 approved by the department as appropriate for the postmining land use;

15 (c) for areas reclaimed for use as fish and wildlife habitat, forestry, or recreation, success of
16 revegetation must be determined on the basis of approved tree density standards or shrub density standards,
17 or both, and vegetative ground cover required to achieve the postmining land use;

18 (d) reestablished vegetation is considered effective if the postmining land use is achieved and erosion
19 is controlled;

20 (e) reestablished vegetation is considered permanent if it is diverse and effective at the end of the 10-
21 year responsibility period specified under subsection (2); and

22 (f) plant species composing the reestablished vegetation are considered to have the same seasonal
23 characteristics of growth as the original vegetation, to be capable of regeneration and plant succession, and to
24 be compatible with the plant and animal species of the area if those plant species are native to the area or are
25 introduced species approved by the department as desirable and necessary to achieve the postmining land
26 use.

27 (2) Inspection and evaluation of reclaimed vegetative cover must be made as soon as possible
28 following an application for final bond release to determine if a satisfactory stand has been established. If the

1 department determines that a satisfactory vegetative cover has been established, it shall release the remaining
2 bond held on the area reclaimed after public notice and an opportunity for hearing as provided in 82-4-232(6).
3 Except as provided in subsection (3), the remaining bond may not be released prior to a period of 10 years after
4 the last year of augmented seeding, fertilizing, irrigation, or other work required under this part for those
5 operations or portions of operations that were seeded after May 2, 1978, or prior to a period of 5 years after
6 initial planting for all exploration activities and all other operations.

7 (3) (a) Vegetative cover of water management facilities and other support facilities composing no
8 more than 10% of the area for which bond release is sought is not subject to the 10-year responsibility period.
9 Water management facilities and other support facilities include sedimentation ponds, diversions, other water
10 management structures, soils stockpiles, and access roads.

11 (b) Vegetative cover of water management facilities and other support facilities composing no more
12 than 10% of the area for which bond release is sought is eligible for bond release if the vegetative cover
13 otherwise meets the reclamation standards in subsection (1).

14 (4) (a) Notwithstanding the provisions of subsections (2) and (3), on land from which coal was
15 removed prior to May 3, 1978, and on land from which coal was not removed and that was not used, disturbed,
16 or redisturbed in connection with this part after May 2, 1978, pursuant to a permit issued by the department
17 under this part, the department may approve for release a bond on an area of reclaimed vegetation that meets
18 the following criteria:

19 (i) it was seeded using a seed mixture that was approved by the department under the criteria
20 established pursuant to 82-4-233 and that included introduced species; and

21 (ii) at least one of the following conditions exists:

22 (A) the standards of 82-4-233(1) are otherwise achieved;

23 (B) the operator has demonstrated substantial usefulness of the reclaimed vegetation for grazing of
24 livestock;

25 (C) the operator demonstrates that the reclaimed vegetation has substantial value as a habitat
26 component for wildlife present in the area; or

27 (D) the topography and soils are suitable for conversion to cropland or hayland consistent with the
28 standards of 82-4-232 and the department approves and the operator completes that conversion.

(b) On lands that meet the criteria described in subsection (4)(a), interseeding or supplemental planting may be performed without reinitiating the liability period provided in subsection (2)."

Section 177. Section 82-4-239, MCA, is amended to read:

"82-4-239. Reclamation. (1) The department may have reclamation work done by its employees, by employees of other governmental agencies, by soil conservation districts, or through contracts with qualified persons. The ~~board~~department may construct, operate, and maintain plants for the control and treatment of water pollution resulting from mine drainage.

(2) Any funds or any public works programs available to the department must be used and expended to reclaim and rehabilitate lands that have been subjected to strip mining or underground mining and that have not been reclaimed and rehabilitated in accordance with the standards of this part. The department shall cooperate with federal, state, and private agencies to engage in cooperative projects under this section.

(3) Agents, employees, or contractors of the department may enter upon any land for the purpose of conducting studies or exploratory work to determine whether the land has been strip- or underground-mined and not reclaimed and rehabilitated in accordance with the requirements of this part and to determine the feasibility of restoration, reclamation, abatement, control, or prevention of any adverse effects of past coal-mining practices. Upon request of the director of the department, the attorney general shall bring an injunctive action to restrain any interference with the exercise of the right to enter and inspect granted in this subsection. The action must be brought in the county in which the mine is located.

(4) (a) The department shall take the actions described in subsection (4)(b) when it makes a finding of fact that:

(i) land or water resources have been adversely affected by past coal-mining practices;

(ii) the adverse effects are at a stage at which, in the public interest, action to restore, reclaim, abate, control, or prevent should be taken; and

(iii) the owners of the land or water resources where entry must be made to restore, reclaim, abate, control, or prevent the adverse effects of past coal-mining practices are not known or readily available or the owners will not give permission for the department or its agents, employees, or contractors to enter upon the property to restore, reclaim, abate, control, or prevent the adverse effects of past coal-mining practices.

(b) After giving notice by mail to the owner, if known, and any purchaser under contract for deed, if known, or, if neither is known, by posting notice on the premises and advertising in a newspaper of general circulation in the county in which the land lies, the agents, employees, or contractors of the department may enter on the property adversely affected by past coal-mining practices and on any other property necessary for access to the mineral property to do all things necessary or expedient to restore, reclaim, abate, control, or prevent the adverse effects of past coal-mining practices.

(c) Action taken under subsection (4)(b) is not an act of condemnation of property or of trespass, but rather is an exercise of the power granted by Article IX, sections 1 and 2, of the Montana constitution.

(5) (a) Within 6 months after the completion of projects to restore, reclaim, abate, control, or prevent adverse effects of past coal-mining practices on privately owned land, the department shall itemize the money expended and may file a statement of those expenses in the office of the clerk and recorder of the county in which the land lies, together with a notarized appraisal by an independent appraiser of the value of the land before the restoration, reclamation, abatement, control, or prevention of adverse effects of past coal-mining practices if the money expended resulted in a significant increase in property value. The statement constitutes a lien upon the land. The lien may not exceed the amount determined by the appraisal to be the increase in the market value of the land as a result of the restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal-mining practices. A lien under this subsection (5)(a) may not be filed against the property of a person who owned the surface prior to May 2, 1977, and who did not consent to, participate in, or exercise control over the mining operation that necessitated the reclamation performed under this part.

(b) The landowner may petition within 60 days of the filing of the lien to determine the increase in the market value of the land as a result of the restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal-mining practices. The amount reported to be the increase in value of the premises constitutes the amount of the lien and must be recorded with the statement provided for in this section. Any party aggrieved by the decision may appeal as provided by law.

(c) The lien provided in this section must be recorded at the office of the county clerk and recorder. The statement constitutes a lien upon the land as of the date of the expenditure of the money and has priority as a lien second only to the lien of real estate taxes imposed upon the land.

(6) The department may acquire the necessary property by gift or purchase. A gift or purchase must

1 be approved by the board of land commissioners. If the property cannot be acquired by gift or purchase at a
2 reasonable cost, proceedings may be instituted in the manner provided in Title 70, chapter 30, against all
3 nonaccepting landholders if:

4 (a) the property is necessary for successful reclamation;

5 (b) the acquired land after restoration, reclamation, abatement, control, or prevention of the adverse
6 effects of past coal-mining practices will serve recreation and historic purposes or conservation and reclamation
7 purposes or provide open space benefits; and

8 (c) (i) permanent facilities, such as treatment plants or relocated stream channels, will be constructed
9 on the land for the restoration, reclamation, abatement, control, or prevention of the adverse effects of past
10 strip- or underground-coal-mining practices; or

11 (ii) acquisition of coal refuse disposal sites and all coal refuse on the land will serve the purposes of
12 this part because public ownership is desirable to meet emergency situations and prevent recurrences of the
13 adverse effects of past coal-mining practices."
14

15 **Section 178.** ~~Section 82-4-251, MCA, is amended to read:~~

16 ~~"82-4-251. Noncompliance -- suspension of permits. (1) If it is determined on the basis of an~~
17 ~~inspection that the permittee is or that any condition or practice exists in violation of any requirement of this part~~
18 ~~or any permit condition required by this part that creates an imminent danger to the health or safety of the~~
19 ~~public or is causing or can reasonably be expected to cause significant and imminent environmental harm to~~
20 ~~land, air, or water resources, the director of the department or an authorized representative shall immediately~~
21 ~~order cessation of the operation or the portion of the operation relevant to the condition, practice, or violation.~~
22 ~~The cessation order remains in effect until the director or an authorized representative determines that the~~
23 ~~condition, practice, or violation has been abated or until modified, vacated, or terminated by the director or an~~
24 ~~authorized representative pursuant to subsection (5). If the director or an authorized representative finds that~~
25 ~~the ordered cessation of the operation or any portion of the operation will not completely abate the imminent~~
26 ~~danger to the health or safety of the public or the significant and imminent environmental harm to land, air, or~~
27 ~~water resources, the director or the authorized representative shall, in addition to the cessation order, impose~~
28 ~~affirmative obligations requiring any steps that the director or the authorized representative considers~~

1 ~~necessary to abate the imminent danger or the significant environmental harm.~~

2 ~~(2) When, on the basis of an inspection, the department determines that any permittee is in violation~~
3 ~~of any requirement of this part or any permit condition required by this part that does not create an imminent~~
4 ~~danger to the health or safety of the public or cannot be reasonably expected to cause significant and imminent~~
5 ~~environmental harm to land, air, or water resources, the director or an authorized representative shall issue a~~
6 ~~notice to the permittee or the permittee's agent fixing a reasonable time, not exceeding 90 days, for the~~
7 ~~abatement of the violation and providing opportunity for public hearing. If, upon expiration of the period of time~~
8 ~~as originally fixed or subsequently extended, for good cause shown and upon the written finding of the director~~
9 ~~or an authorized representative, the director or an authorized representative finds that the violation has not~~
10 ~~been abated, the director or an authorized representative shall immediately order a cessation of the operation~~
11 ~~or the portion of the operation relevant to the violation. The cessation order remains in effect until the director or~~
12 ~~an authorized representative determines that the violation has been abated or until modified, vacated, or~~
13 ~~terminated by the director or an authorized representative pursuant to subsection (5). In the order of cessation~~
14 ~~issued under this subsection, the director shall determine the steps necessary to abate the violation in the most~~
15 ~~expeditious manner possible and shall include the necessary measures in the order.~~

16 ~~(3) When, on the basis of an inspection, the director or an authorized representative determines that a~~
17 ~~pattern of violations of any requirements of this part or any permit conditions required by this part exists or has~~
18 ~~existed and if the director or an authorized representative also finds that the violations are caused by the~~
19 ~~unwarranted failure of the permittee to comply with any requirements of this part or any permit conditions or that~~
20 ~~the violations are willfully caused by the permittee, the director or an authorized representative shall issue an~~
21 ~~order to the permittee to show cause as to why the permit should not be suspended or revoked and shall~~
22 ~~provide opportunity for a public hearing. If a hearing is requested, the director shall inform all interested parties~~
23 ~~of the time and place of the hearing. Upon the permittee's failure to show cause as to why the permit should not~~
24 ~~be suspended or revoked, the director or an authorized representative shall suspend or revoke the permit. A~~
25 ~~permittee may request a contested case hearing on a permit suspension or revocation by filing a request for~~
26 ~~hearing, specifying the grounds for the request, within 30 days of receipt of the order of suspension or~~
27 ~~revocation. The order is effective upon expiration of the period for requesting a hearing or, if a hearing is~~
28 ~~requested, upon issuance of a final order by the board department. The hearing must be conducted in~~

1 ~~accordance with the requirements of Title 2, chapter 4, part 6. When a permit has been revoked, the~~
2 ~~department may order the performance bond forfeited.~~

3 ~~(4) Any additional permits held by an operator whose mining permit has been revoked must be~~
4 ~~suspended, and the operator is not eligible to receive another permit or to have the suspended permits~~
5 ~~reinstated until the operator has complied with all the requirements of this part with respect to former permits~~
6 ~~issued to the operator. An operator who has forfeited a bond is not eligible to receive another permit unless the~~
7 ~~land for which the bond was forfeited has been reclaimed without cost to the state or the operator has paid into~~
8 ~~the reclamation account a sum together with the value of the bond the department finds adequate to reclaim the~~
9 ~~lands.~~

10 ~~(5) Notices and orders issued pursuant to this section must set forth with reasonable specificity the~~
11 ~~nature of the violation and the remedial action required, the period of time established for abatement, and a~~
12 ~~reasonable description of the portion of the operation to which the notice or order applies. Each notice or order~~
13 ~~issued under this section must be given promptly to the permittee or the permittee's agent by the department,~~
14 ~~by the director, or by the authorized representative who issued the notice or order. All notices and orders must~~
15 ~~be in writing and be signed by the authorized representatives. Any notice or order issued pursuant to this~~
16 ~~section may be modified, vacated, or terminated by the director or an authorized representative. However, any~~
17 ~~notice or order issued pursuant to this section that requires cessation of mining by the operator expires within~~
18 ~~30 days of actual notice to the operator unless an informal public hearing, if requested by the person to whom~~
19 ~~the notice or order was issued, is held at the site or within such reasonable proximity to the site that any~~
20 ~~viewings of the site can be conducted during the course of the hearing. If the department receives a request for~~
21 ~~an informal public hearing 21 days after service of the notice or order, the period for holding the informal public~~
22 ~~hearing is extended by the number of days after the 21st day that the request was received.~~

23 ~~(6) A person who has been issued a notice or an order of cessation pursuant to subsection (1) or (2)~~
24 ~~or a person who has an interest that is or may be adversely affected by an order issued pursuant to subsection~~
25 ~~(1) or (2) or by modification, vacation, or termination of that order may request a hearing before the board~~
26 ~~department on that order within 30 days of its issuance or within 30 days of its modification, vacation, or~~
27 ~~termination. The filing of an application for review under this subsection may not operate as a stay of any order~~
28 ~~or notice. The board department shall make findings of fact and issue a written decision incorporating an order~~

1 ~~vacating, affirming, modifying, or terminating the order.~~

2 ~~(7) Whenever an order is issued under this section or as the result of any administrative proceeding~~
3 ~~under this part, at the request of any person, a sum equal to the aggregate amount of all costs, expenses, and~~
4 ~~attorney fees as determined by the department to have been reasonably incurred by the person for or in~~
5 ~~connection with the person's participation in the proceedings, including any judicial review of agency actions,~~
6 ~~may be assessed against either party as the court, resulting from judicial review, or the department, resulting~~
7 ~~from administrative proceedings, considers proper.~~

8 ~~(8) In order to protect the stability of the land, the director or an authorized representative shall order~~
9 ~~cessation of underground coal mining under urbanized areas, cities, towns, and communities and adjacent to~~
10 ~~industrial or commercial buildings, major impoundments, or permanent streams if the director or the authorized~~
11 ~~agent finds imminent danger to inhabitants of the urbanized areas, cities, towns, and communities."~~

12

13 **Section 179.** Section 82-4-254, MCA, is amended to read:

14 **"82-4-254. Violation -- penalty -- waiver.** (1) (a) Except as provided in subsection (2), a person or
15 operator who violates any of the provisions of this part, rules adopted or orders issued under this part, or term
16 or condition of a permit and any director, officer, or agent of a corporation who purposely or knowingly
17 authorizes, orders, or carries out a violation shall pay an administrative penalty of not less than \$100 or more
18 than \$5,000 for the violation and an additional administrative penalty of not less than \$100 or more than \$5,000
19 for each day during which a violation continues and may be enjoined from continuing the violations as provided
20 in this section. A person or operator who fails to correct a violation within the period permitted by law, rule of the
21 board, or order of the department must be assessed a penalty of not less than \$750 for each day, up to 30
22 days, during which the failure or violation continues.

23 (b) Penalties assessed under this section must be determined in accordance with the penalty factors
24 in 82-4-1001.

25 (c) The period permitted for correction of a violation does not, in the case of any review proceeding
26 under 82-4-251(6), end until entry of a final order suspending the abatement requirements or until entry of an
27 order of court ordering suspension of the abatement requirements. If the failure to abate continues for more
28 than 30 days, the department shall, within 30 days after the 30-day period, take appropriate action pursuant to

1 82-4-251(3) or request action under subsection (4) or (6) of this section.

2 (2) The department may waive the penalty for a minor violation of this part, a rule adopted or an order
3 issued under this part, or a term or condition of a permit if the department determines that the violation is not of
4 potential harm to public health, public safety, or the environment and does not impair the administration of this
5 part. The department may not waive a penalty assessed under this section if the person or operator fails to
6 abate the violation as directed under 82-4-251. The ~~board~~ department shall adopt rules to implement and
7 administer a procedure for waiver of a penalty under this subsection.

8 (3) (a) To assess an administrative penalty under this section, the department shall issue a notice of
9 violation and penalty order to the person or operator, unless the penalty is waived pursuant to subsection (2).
10 The notice and order must specify the provision of this part, rule adopted or order issued under this part, or
11 term or condition of a permit that is violated and must contain findings of fact, conclusions of law, and a
12 statement of the proposed administrative penalty. The notice and order must be served personally or by
13 certified mail. Service by mail is complete 3 business days after the date of mailing. The notice and order
14 become final unless, within 30 days after the order is served, the person or operator to whom the order was
15 issued requests a hearing before the ~~board~~ department board. By submitting to the ~~board~~ department a written
16 request within 30 days of service of the notice of violation, stating the reason for the request, the person or
17 operator is entitled to a hearing before the ~~board~~ department board under 82-4-206 on the issues of whether
18 the alleged violation has occurred and whether the penalty proposed to be assessed is proper. On receipt of a
19 request, the ~~board~~ department board shall schedule a hearing. After a hearing, the ~~board~~ department board
20 shall make findings of fact and issue a written decision as to the occurrence of the violation and the amount of
21 penalty warranted. If the ~~board~~ department board finds that the violation occurred and a penalty is warranted, it
22 shall order the payment of the penalty. If the time for requesting a hearing expires without a hearing request,
23 the person or operator shall remit the amount of the penalty within 30 days of the expiration of the period for
24 requesting a hearing.

25 (b) If the person or operator to whom a final order is issued under subsection (3)(a) wishes to obtain
26 judicial review of the order, the person or operator shall submit with any assessed penalty a statement that the
27 penalty is being paid under protest and the department shall hold the payment in escrow until judicial review is
28 complete. Any person or operator who fails to request and submit testimony at the hearing provided for in

subsection (3)(a) or who fails to pay any assessed penalty under protest within 30 days of the order assessing the penalty forfeits the right to seek judicial review of the violation and penalty determinations.

(c) Penalties provided for in this section are recoverable in an action brought by the department. The action must be filed in the district court of the first judicial district, Lewis and Clark County, if mutually agreed on by the parties in the action, or in the district court having jurisdiction over the defendant.

(4) The department may bring an action for a restraining order or temporary or permanent injunction against an operator or other person who:

(a) violates, threatens to violate, or fails or refuses to comply with any order or decision issued under this part;

(b) interferes with, hinders, or delays the department in carrying out the provisions of this part;

(c) refuses to admit an authorized representative of the department to the permit area;

(d) refuses to permit inspection of the permit area by an authorized representative of the department;

(e) refuses to furnish any information or report requested by the department in furtherance of the provisions of this part; or

(f) refuses to permit access to and copying of records that the department determines to be necessary in carrying out the provisions of this part.

(5) Any relief granted by a court under subsection (4)(a) continues in effect until the completion or final termination of all proceedings for review of relief granted under this part unless, prior to the final determination, the district court granting the relief sets it aside or modifies it.

(6) A person who violates any of the provisions of this part or any determination or order issued under this part or who purposely or knowingly violates any permit condition issued under this part is guilty of a misdemeanor and shall be fined an amount not less than \$500 and not more than \$10,000 or be imprisoned for not more than 1 year, or both. Each day on which the violation occurs constitutes a separate offense.

(7) A person who knowingly makes any false statement, representation, or certification or knowingly fails to make any statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained pursuant to this part shall upon conviction be punished by a fine of not more than \$10,000 or by imprisonment for not more than 1 year, or both.

(8) A person who except as permitted by law purposely or knowingly resists, prevents, impedes, or

interferes with the department or its agents in the performance of duties pursuant to this part shall be punished by a fine of not more than \$5,000 or by imprisonment for not more than 1 year, or both.

(9) An employee of the department performing any function or duty under this part may not have a direct or indirect financial interest in any strip- or underground-coal-mining operation. A person who knowingly violates the provisions of this subsection shall upon conviction be punished by a fine of not more than \$2,500 or by imprisonment of not more than 1 year, or both.

(10) Within 30 days after receipt of full payment of an administrative penalty assessed under this section, the department shall issue a written release of civil liability for the violations for which the penalty was assessed."

Section 180. ~~Section 82-4-303, MCA, is amended to read:~~

~~"82-4-303. Definitions. As used in this part, unless the context indicates otherwise, the following definitions apply:~~

~~(1) "Abandonment of surface or underground mining" may be presumed when it is shown that continued operation will not resume.~~

~~(2) "Amendment" means a change to an approved operating or reclamation plan. A major amendment is an amendment that may significantly affect the human environment. A minor amendment is an amendment that will not significantly affect the human environment.~~

~~(3) "Board" means the board of environmental review provided for in 2-15-3502.~~

~~(4) (3) "Certification" means, with regard to tailings storage facilities, a statement of opinion by a professional engineer that the work on a tailings storage facility has been conducted in accordance with the normal standard of care within dam engineering practice. Certification does not constitute a warranty or guarantee of facts or conditions certified.~~

~~(5) (4) "Completeness" means that an application contains information addressing each applicable permit requirement as listed in this part or rules adopted pursuant to this part in sufficient detail for the department to make a decision as to adequacy of the application to meet the requirements of this part.~~

~~(6) (5) "Constructor" means the company or companies constructing the built components of a tailings storage facility, including but not limited to embankment dams, surface water diversion structures, tailings~~

~~distribution systems, reclaim water systems, and monitoring instrumentation.~~

~~(7) (6) "Cyanide ore processing reagent" means cyanide or a cyanide compound used as a reagent in leaching operations.~~

~~(8) (7) "Department" means the department of environmental quality provided for in 2-15-3501.~~

~~(9) (8) "Disturbed land" means the area of land or surface water that has been disturbed, beginning at the date of the issuance of the permit. The term includes the area from which the overburden, tailings, waste materials, or minerals have been removed and tailings ponds, waste dumps, roads, conveyor systems, load-out facilities, leach dumps, and all similar excavations or coverings that result from the operation and that have not been previously reclaimed under the reclamation plan.~~

~~(10) (9) "Engineer of record" means a qualified engineer who is the lead designer for a tailings storage facility.~~

~~(11) (10) "Expansion" means, with regard to tailings storage facilities, a change in the size, height, or configuration of or a contiguous addition to an existing tailings storage facility that increases or may increase the storage capacity of the impoundment above the currently permitted capacity.~~

~~(12) (11) "Exploration" means:~~

~~(a) all activities that are conducted on or beneath the surface of lands and that result in material disturbance of the surface for the purpose of determining the presence, location, extent, depth, grade, and economic viability of mineralization in those lands, if any, other than mining for production and economic exploitation; and~~

~~(b) all roads made for the purpose of facilitating exploration, except as noted in 82-4-310.~~

~~(13) (12) "Independent review engineer" means a licensed engineer who is a recognized expert in tailings storage facility design, construction, operation, and closure.~~

~~(14) (13) "Material deviation" means a failure to follow a condition in a design document, corrective action plan, schedule, or tailings operation, maintenance, and surveillance manual that could reasonably be expected to substantively impair a tailings storage facility from performing as intended.~~

~~(15) (14) "Maximum credible earthquake" means the most severe earthquake that can be expected at a site based on geologic and seismological evidence, including a review of all historic earthquake data of events sufficiently nearby to influence the site, all faults in the area, and attenuations from causative faults to~~

1 ~~the site.~~

2 ~~(16) (15) "Mineral" means any ore, rock, or substance, other than oil, gas, bentonite, clay, coal, sand,~~
3 ~~gravel, peat, soil materials, or uranium, that is taken from below the surface or from the surface of the earth for~~
4 ~~the purpose of milling, concentration, refinement, smelting, manufacturing, or other subsequent use or~~
5 ~~processing or for stockpiling for future use, refinement, or smelting.~~

6 ~~(17) (16) "Mining" commences when the operator first mines ores or minerals in commercial quantities~~
7 ~~for sale, beneficiation, refining, or other processing or disposition or first takes bulk samples for metallurgical~~
8 ~~testing in excess of the aggregate of 10,000 short tons.~~

9 ~~(18) (17) "Observational method" means a continuous, managed, and integrated process of design,~~
10 ~~construction control, monitoring, and review enabling appropriate, previously defined modifications to be~~
11 ~~incorporated during and after construction.~~

12 ~~(19) (18) "Operator" means a person who has an operating permit issued under 82-4-335.~~

13 ~~(20) (19) "Ore processing" means milling, heap leaching, flotation, vat leaching, or other standard~~
14 ~~hard-rock mineral concentration processes.~~

15 ~~(21) (20) "Panel" means the tailings storage facility independent review panel created for each new or~~
16 ~~expanded tailings storage facility.~~

17 ~~(22) (21) "Person" means any person, corporation, firm, association, partnership, or other legal entity~~
18 ~~engaged in exploration for or mining of minerals on or below the surface of the earth, reprocessing of tailings or~~
19 ~~waste materials, or operation of a hard-rock mill.~~

20 ~~(23) (22) "Placer deposit" means:~~

21 ~~(a) naturally occurring, scattered, or unconsolidated valuable minerals in gravel, glacial, eolian,~~
22 ~~colluvial, or alluvial deposits lying above bedrock; or~~

23 ~~(b) all forms of deposit except veins of quartz and other rock in place.~~

24 ~~(24) (23) "Placer or dredge mining" means the mining of minerals from a placer deposit by a person or~~
25 ~~persons.~~

26 ~~(25) (24) "Practicable" means available and capable of being implemented after taking into~~
27 ~~consideration cost, existing technology, and logistics in light of overall project purposes.~~

28 ~~(26) (25) "Professional engineer" means a registered professional engineer licensed to practice in~~

~~Montana under Title 37, chapter 67, part 3.~~

~~(27) (26) "Qualified engineer" means a professional engineer who has a minimum of 10 years of direct experience with the design and construction of tailings storage facilities and has the appropriate professional and educational credentials to effectively determine appropriate parameters for the safe design, construction, operation, and closure of a tailings storage facility.~~

~~(28) (27) "Reclamation plan" means the operator's written proposal, as required and approved by the department, for reclamation of the land that will be disturbed. The proposal must include, to the extent practical at the time of application for an operating permit:~~

~~(a) a statement of the proposed subsequent use of the land after reclamation, which may include use of the land as an industrial site not necessarily related to mining;~~

~~(b) plans for surface gradient restoration to a surface suitable for the proposed subsequent use of the land after reclamation is completed and the proposed method of accomplishment;~~

~~(c) the manner and type of revegetation or other surface treatment of disturbed areas;~~

~~(d) procedures proposed to avoid foreseeable situations of public nuisance, endangerment of public safety, damage to human life or property, or unnecessary damage to flora and fauna in or adjacent to the area;~~

~~(e) the method of disposal of mining debris;~~

~~(f) the method of diverting surface waters around the disturbed areas when necessary to prevent pollution of those waters or unnecessary erosion;~~

~~(g) the method of reclamation of stream channels and stream banks to control erosion, siltation, and pollution;~~

~~(h) maps and other supporting documents that may be reasonably required by the department; and~~

~~(i) a time schedule for reclamation that meets the requirements of 82-4-336.~~

~~(29) (28) "Rock products" means decorative rock, building stone, riprap, mineral aggregates, and other minerals produced by typical quarrying activities or collected from or just below the ground surface.~~

~~(30) (29) (a) "Small miner" means a person, firm, or corporation that engages in mining activity that is not exempt from this part pursuant to 82-4-310, that engages in the business of reprocessing of tailings or waste materials, that, except as provided in 82-4-310, knowingly allows other persons to engage in mining activities on land owned or controlled by the person, firm, or corporation, that does not hold an operating permit~~

~~under 82-4-335 except for a permit issued under 82-4-335(3) or a permit that meets the criteria of subsection (30) (c) (29)(c) of this section, and that conducts:~~

~~(i) an operation that results in not more than 5 acres of the earth's surface being disturbed and unreclaimed; or~~

~~(ii) two operations that disturb and leave unreclaimed less than 5 acres for each operation if the respective mining properties are:~~

~~(A) the only operations engaged in by the person, firm, or corporation; and~~

~~(B) at least 1 mile apart at their closest point.~~

~~(b) For the purpose of this definition only, the department shall, in computing the area covered by the operation:~~

~~(i) exclude access or haulage roads that are required by a local, state, or federal agency having jurisdiction over that road to be constructed to certain specifications if that public agency notifies the department in writing that it desires to have the road remain in use and will maintain it after mining ceases; and~~

~~(ii) exclude access roads for which the person, firm, or corporation submits a bond to the department in the amount of the estimated total cost of reclamation along with a description of the location of the road and the specifications to which it will be constructed.~~

~~(c) A small miner may hold an operating permit that allows disturbance of 100 acres or less. The permit may be amended to add new disturbance areas, but the total area permitted for disturbance may not exceed 100 acres at any time.~~

~~(31) (30) "Soil materials" means earth material found in the upper soil layers that will support plant growth.~~

~~(32) (31) (a) "Surface mining" means all or any part of the process involved in mining of minerals by removing the overburden and mining directly from the mineral deposits exposed, including but not limited to open-pit mining of minerals naturally exposed at the surface of the earth, mining by the auger method, and all similar methods by which earth or minerals exposed at the surface are removed in the course of mining.~~

~~(b) Surface mining does not include the extraction of oil, gas, bentonite, clay, coal, sand, gravel, peat, soil materials, or uranium or excavation or grading conducted for onsite farming, onsite road construction, or other onsite building construction.~~

~~(33) (32) "Tailings" means the residual materials remaining after a milling process that separates the valuable fraction from the uneconomic fraction of an ore mined by an operator.~~

~~(34) (33) (a) "Tailings storage facility" means a facility that temporarily or permanently stores tailings, including the impoundment, embankment, tailings distribution works, reclaim water works, monitoring devices, storm water diversions, and other ancillary structures.~~

~~(b) The term does not include a facility that:~~

~~(i) stores 50 acre-feet or less of free water or process solution;~~

~~(ii) is wholly contained below surrounding grade with no man-made structures retaining tailings, water, or process solution or underground mines that use tailings as backfill; or~~

~~(iii) stores dry stack or filtered tailings.~~

~~(35) (34) "Underground mining" means all methods of mining other than surface mining.~~

~~(36) (35) "Unit of surface-mined area" means that area of land and surface water included within an operating permit actually disturbed by surface mining during each 12-month period of time, beginning at the date of the issuance of the permit. The term includes the area from which overburden or minerals have been removed, the area covered by mining debris, and all additional areas used in surface mining or underground mining operations that by virtue of mining use are susceptible to erosion in excess of the surrounding undisturbed portions of land.~~

~~(37) (36) "Vegetative cover" means the type of vegetation, grass, shrubs, trees, or any other form of natural cover considered suitable at time of reclamation."~~

Section 181. Section 82-4-304, MCA, is amended to read:

"82-4-304. Exemption -- works performed prior to promulgation of rules. This part is not applicable to any exploration or mining work performed prior to the date of promulgation of the ~~board's initial~~ rules pursuant to 82-4-321 relating to exploration and mining. This part is not applicable to the reprocessing of tailings or waste rock that occurred prior to the date of promulgation of the ~~board's initial~~ rules regarding those activities. If, after the date of promulgation of initial rules applicable to mills not located at a mine site, work is performed at a mill that does not use cyanide ore-processing reagent and that was constructed and operated before promulgation of those rules, this part applies only to the areas initially disturbed after promulgation of

1 those rules."

2

3 **Section 182.** ~~Section 82-4-305, MCA, is amended to read:~~

4 ~~"82-4-305. Exemption -- small miners -- written agreement. (1) Except as provided in subsections~~
5 ~~(3) through (11), the provisions of this part do not apply to a small miner if the small miner annually agrees in~~
6 ~~writing:~~

7 ~~(a) that the small miner will not pollute or contaminate any stream;~~

8 ~~(b) that the small miner will provide protection for human and animal life through the installation of~~
9 ~~bulkheads installed over safety collars and the installation of doors on tunnel portals;~~

10 ~~(c) that the small miner will provide a map locating the miner's mining operations. The map must be of~~
11 ~~a size and scale determined by the department.~~

12 ~~(d) if the small miner's operations are placer or dredge mining, that the small miner shall salvage and~~
13 ~~protect all soil materials for use in reclamation of that site and shall reclaim all land disturbed by the operations~~
14 ~~to comparable utility and stability as that of adjacent areas.~~

15 ~~(2) For small miner exemptions obtained after September 30, 1985, a small miner may not obtain or~~
16 ~~continue an exemption under subsection (1) unless the small miner annually certifies in writing:~~

17 ~~(a) if the small miner is an individual, that:~~

18 ~~(i) no business association or partnership of which the small miner is a member or partner has a~~
19 ~~small miner exemption; and~~

20 ~~(ii) no corporation of which the small miner is an officer, director, or owner of record of 25% or more of~~
21 ~~any class of voting stock has a small miner exemption; or~~

22 ~~(b) if the small miner is a partnership or business association, that:~~

23 ~~(i) none of the associates or partners holds a small miner exemption; and~~

24 ~~(ii) none of the associates or partners is an officer, director, or owner of 25% or more of any class of~~
25 ~~voting stock of a corporation that has a small miner exemption; or~~

26 ~~(c) if the small miner is a corporation, that no officer, director, or owner of record of 25% or more of~~
27 ~~any class of voting stock of the corporation:~~

28 ~~(i) holds a small miner exemption;~~

~~(ii) is a member or partner in a business association or partnership that holds a small-miner exemption;~~
~~(iii) is an officer, director, or owner of record of 25% or more of any class of voting stock of another corporation that holds a small-miner exemption.~~

~~(3) A small miner whose operations are placer or dredge mining shall post a performance bond equal to the state's documented cost estimate of reclaiming the disturbed land, although the bond may not exceed \$10,000 for each operation. If the small miner has posted a bond for reclamation with another government agency, the small miner is exempt from the requirement of this subsection.~~

~~(4) If a small miner who conducts a placer or dredge mining operation fails to reclaim the operation, the small miner is liable to the department for all its reasonable costs of reclamation, including a reasonable charge for services performed by state personnel and for state materials and equipment used. If the small miner posts a surety bond, the surety is liable to the state to the extent of the bond amount and the small miner is liable for the remainder of the reasonable costs to the state of reclaiming the operation.~~

~~(5) If a small miner who conducts a placer or dredge mining operation fails to commence reclamation of the operation within 6 months after cessation of mining or within an extended period allowed by the department for good cause shown or if the small miner fails to diligently complete reclamation, the department shall notify the small miner by certified mail that it intends to reclaim the operation unless the small miner commences reclamation within 30 days and diligently completes the reclamation. The notice must be mailed to the address stated on the small miner exclusion statement or, if the small miner has notified the department of a different address by letter or in the annual certification form, to the most recent address given to the department. If the small miner fails to commence reclamation within 30 days or to diligently complete reclamation, the department may revoke the small miner exclusion statement, forfeit any bond that has been posted with the department, and enter and reclaim the operation. If the small miner has not posted a bond with the department or if the reasonable costs of reclamation exceed the amount of the bond, the department may also collect additional reclamation costs, as set forth in subsection (6), before or after it incurs those costs.~~

~~(6) To collect additional reclamation costs, the department shall notify the small miner by certified mail, at the address determined under subsection (5), of the additional reasonable reclamation costs and request payment within 30 days. If the small miner does not pay the additional reclamation costs within 30 days, the department may bring an action in district court for payment of the estimated future costs and, if the~~

~~department has performed any reclamation, of its reasonable actual costs. The court shall order payment of costs that it determines to be reasonable and shall retain jurisdiction until reclamation of the operation is completed. Upon completion of reclamation, the court shall order payment of any additional costs that it considers reasonable or the refund of any portion of any payment for estimated costs that exceeds the actual reasonable costs incurred by the department.~~

~~(7) A small miner who intends to use a cyanide ore processing reagent or other metal leaching solvents or reagents shall obtain an operating permit for that part of the small miner's operation in which the cyanide ore processing reagent or other metal leaching solvents or reagents will be used or disposed of. The acreage disturbed by the operation using cyanide ore processing reagents or other metal leaching solvents or reagents and covered by the operating permit is excluded from the 5-acre limit specified in 82-4-303(30)(a)(i) and (30)(a)(ii) 82-4-303(29)(a)(i) and (29)(a)(ii).~~

~~(8) (a) Except for a small miner proposing to conduct a placer or dredge mining operation, a small miner who intends to use an impoundment to store waste from ore processing shall obtain approval for the design, construction, operation, and reclamation of that impoundment and post a performance bond for that part of the small miner's operation before constructing an impoundment. The small miner shall post a performance bond equal to the state's documented cost estimate of reclaiming the disturbed land. If the small miner has posted a bond for reclamation of that site with a federal government agency, the small miner is exempt from the requirements of this subsection (8)(a).~~

~~(b) The department shall conduct a review of the adequacy of the bond posted by a small miner using an impoundment pursuant to this section at least once every 5 years and adjust the bond if necessary to ensure reclamation of the impoundment. The acreage disturbed by the portion of the operation that uses an impoundment to store waste from ore processing is included in the 5-acre limit specified in 82-4-303(30)(a)(i) and (30)(a)(ii) 82-4-303(29)(a)(i) and (29)(a)(ii) and is subject to the provisions of this subsection (8).~~

~~(c) If a small miner under this subsection (8) fails to reclaim the operation, the small miner is liable to the department for all its reasonable costs of reclamation, including a reasonable charge for services performed by state personnel and for state materials and equipment used. If the small miner posts a surety bond, the surety is liable to the state to the extent of the bond amount and the small miner is liable for the remainder of the reasonable costs to the state of reclaiming the operation.~~

~~(d) If a small miner under this subsection (8) fails to commence reclamation of the operation within 6 months after cessation of mining or within an extended period allowed by the department for good cause shown or if the small miner fails to diligently complete reclamation, the department shall notify the small miner by certified mail that it intends to reclaim the operation unless the small miner commences reclamation within 30 days and diligently completes the reclamation. The notice must be mailed to the address stated on the small miner exclusion statement or, if the small miner has notified the department of a different address by letter or in the annual certification form, to the most recent address given to the department. If the small miner fails to commence reclamation within 30 days or to diligently complete reclamation, the department may revoke the small miner exclusion statement, forfeit any bond that has been posted with the department, and enter and reclaim the operation. If the small miner has not posted a bond with the department or if the reasonable costs of reclamation exceed the amount of the bond, the department may also collect additional reclamation costs, as set forth in subsection (8)(e), before or after it incurs those costs.~~

~~(e) To collect additional reclamation costs, the department shall notify the small miner by certified mail, at the address determined under subsection (8)(d), of the additional reasonable reclamation costs and request payment within 30 days. If the small miner does not pay the additional reclamation costs within 30 days, the department may bring an action in district court for payment of the estimated future costs and, if the department has performed any reclamation, of its reasonable actual costs. The court shall order payment of costs that it determines to be reasonable and shall retain jurisdiction until reclamation of the operation is completed. Upon completion of reclamation, the court shall order payment of any additional costs that it considers reasonable or the refund of any portion of any payment for estimated costs that exceeds the actual reasonable costs incurred by the department.~~

~~(f) Except for a small miner who conducts a placer or dredge mining operation, a small miner utilizing an impoundment to store waste from ore processing on or after April 28, 2005, shall obtain approval of the design, construction, operation, and reclamation of that impoundment and post a performance bond within 6 months of April 28, 2005. If the small miner has posted a bond for reclamation of that site with a federal government agency, the small miner is exempt from the requirements of this subsection (8)(f).~~

~~(9) The exemption provided in this section does not apply to a person:~~

~~(a) whose failure to comply with the provisions of this part, the rules adopted under this part, or a~~

~~permit or license issued under this part has resulted in the forfeiture of a bond, unless that person meets the conditions described under 82-4-360;~~

~~(b) who has not paid a penalty for which the department has obtained a judgment pursuant to 82-4-361;~~

~~(c) who has failed to post a reclamation bond required by this section, unless the department has certified that the area for which the bond should have been posted has been reclaimed by that person or reclaimed by the department and the person has reimbursed the department for the cost of the reclamation; or~~

~~(d) who has failed to comply with an abatement order issued pursuant to 82-4-362, unless the department has completed the abatement and the person has reimbursed the department for the cost of abatement.~~

~~(10) The exemption provided in this section does not apply to an area:~~

~~(a) under permit pursuant to 82-4-335;~~

~~(b) that has been permitted pursuant to 82-4-335 and reclaimed by the permittee, the department, or any other state or federal agency; or~~

~~(c) that has been reclaimed by or has been subject to remediation of contamination or pollution by a public agency, under supervision of a public agency, or using public funds.~~

~~(11) A small miner may not use mercury except in a contained facility that prevents the escape of any mercury into the environment."~~

Section 183. Section 82-4-309, MCA, is amended to read:

"82-4-309. Exemption -- operations on federal lands. This part ~~shall not be applicable~~ does not apply to operations on certain federal lands as specified by the ~~board~~ department, provided it is first determined by the ~~board~~ department that federal law or regulations issued by the federal agency administering such land impose controls for reclamation of said lands substantially equal to or greater than those imposed by this part."

Section 184. Section 82-4-321, MCA, is amended to read:

"82-4-321. Administration. The department is charged with the responsibility of administering this part. ~~In order to implement its terms and provisions, the board shall from time to time promulgate such and~~

1 ~~adopting~~ rules as ~~the board shall deem~~ necessary. The department shall employ experienced, qualified persons
2 in the field of mined-land reclamation who, for the purpose of this part, are referred to as supervisors."
3

4 **Section 185.** Section 82-4-332, MCA, is amended to read:

5 **"82-4-332. Exploration license.** (1) An exploration license must be issued to any applicant who:

- 6 (a) pays a fee of \$100 to the department;
- 7 (b) agrees to reclaim any surface area damaged by the applicant during exploration operations, as
8 may be reasonably required by the department;
- 9 (c) is not in default of any other reclamation obligation under this law.

10 (2) An application for an exploration license must be made in writing, notarized, and submitted to the
11 department in duplicate upon forms prepared and furnished by it. The application must include an exploration
12 map or sketch in sufficient detail to locate the area to be explored and to determine whether significant
13 environmental problems would be encountered. ~~The board~~department shall by rule determine the precise
14 nature of the exploration map or sketch. The applicant shall state what type of prospecting and excavation
15 techniques will be employed in disturbing the land.

16 (3) Prior to the issuance of an exploration license, the applicant shall file with the department a
17 reclamation and revegetation bond in a form and amount as determined by the department in accordance with
18 82-4-338.

19 (4) In the event that the holder of an exploration license desires to mine the area covered by the
20 exploration license and has fulfilled all of the requirements for an operating permit, the department shall allow
21 the postponement of the reclamation of the acreage explored if that acreage is incorporated into the complete
22 reclamation plan submitted with the application for an operating permit. Any land actually affected by
23 exploration or excavation under an exploration license and not covered by the operating reclamation plan must
24 be reclaimed within 2 years after the completion of exploration or abandonment of the site in a manner
25 acceptable to the department."
26

27 **Section 186.** Section 82-4-335, MCA, is amended to read:

28 **"82-4-335. Operating permit -- limitation -- fees.** (1) A person may not engage in mining, ore

1 processing, or reprocessing of tailings or waste material, construct or operate a hard-rock mill, use cyanide ore-
2 processing reagents or other metal leaching solvents or reagents, or disturb land in anticipation of those
3 activities in the state without first obtaining a final operating permit from the department. Except as provided in
4 subsection (2), a separate final operating permit is required for each complex.

5 (2) (a) A person who engages in the mining of rock products or a landowner who allows another
6 person to engage in the mining of rock products from the landowner's land may obtain an operating permit for
7 multiple sites if each of the multiple sites does not:

8 (i) operate within 100 feet of surface water or in ground water or impact any wetland, surface water, or
9 ground water;

10 (ii) have any water impounding structures other than for storm water control;

11 (iii) have the potential to produce acid, toxic, or otherwise pollutive solutions;

12 (iv) adversely impact a member of or the critical habitat of a member of a wildlife species that is listed
13 as threatened or endangered under the Endangered Species Act of 1973; or

14 (v) impact significant historic or archaeological features.

15 (b) A landowner who is a permittee and who allows another person to mine on the landowner's land
16 remains responsible for compliance with this part, the rules adopted pursuant to this part, and the permit for all
17 mining activities conducted on sites permitted pursuant to this subsection (2) with the landowner's permission.
18 The performance bond required under this part is and must be conditioned upon compliance with this part, the
19 rules adopted pursuant to this part, and the permit of the landowner and any person who mines with the
20 landowner's consent.

21 (3) A small miner who intends to use a cyanide ore-processing reagent or other metal leaching
22 solvents or reagents shall obtain an operating permit for that part of the small miner's operation where the
23 cyanide ore-processing reagent or other metal leaching solvents or reagents will be used or disposed of.

24 (4) (a) Prior to receiving an operating permit from the department, a person shall pay the basic permit
25 fee of \$500. The department may require a person who is applying for a permit pursuant to subsection (1) to
26 pay an additional fee not to exceed the actual amount of contractor and employee expenses beyond the normal
27 operating expenses of the department whenever those expenses are reasonably necessary to provide for
28 timely and adequate review of the application, including any environmental review conducted under Title 75,

chapter 1, parts 1 and 2. The ~~board~~department may further define these expenses by rule. Whenever the department determines that an additional fee is necessary and the additional fee will exceed \$5,000, the department shall notify the applicant that a fee must be paid and submit to the applicant an itemized estimate of the proposed expenses. The department shall provide the applicant an opportunity to review the department's estimated expenses. The applicant may indicate which proposed expenses the applicant considers duplicative or excessive, if any.

(b) (i) Subject to subsection (4)(b)(ii), a contractor shall, at the request of the applicant, directly submit invoices of contractor expenses to the applicant.

(ii) A contractor's work is assigned, reviewed, accepted, or rejected by the department pursuant to this section.

(5) The person shall submit an application on a form provided by the department, which must contain the following information and any other pertinent data required by rule:

(a) the name and address of the operator, the engineer of record if applicable, and, if a corporation or other business entity, the name and address of its officers, directors, owners of 10% or more of any class of voting stock, partners, and the like and its resident agent for service of process, if required by law;

(b) the minerals expected to be mined;

(c) a proposed reclamation plan;

(d) the expected starting date of operations;

(e) a map showing the specific area to be mined and the boundaries of the land that will be disturbed, the topographic detail, the location and names of all streams, roads, railroads, and utility lines on or immediately adjacent to the area, and the location of proposed access roads to be built;

(f) the names and addresses of the owners of record and any purchasers under contracts for deed of the surface of the land within the permit area and the owners of record and any purchasers under contracts for deed of all surface area within one-half mile of any part of the permit area, provided that the department is not required to verify this information;

(g) the names and addresses of the present owners of record and any purchasers under contracts for deed of all minerals in the land within the permit area, provided that the department is not required to verify this information;

- 1 (h) the source of the applicant's legal right to mine the mineral on the land affected by the permit,
2 provided that the department is not required to verify this information;
- 3 (i) the types of access roads to be built and manner of reclamation of road sites on abandonment;
- 4 (j) a plan that will provide, within limits of normal operating procedures of the industry, for completion
5 of the operation;
- 6 (k) ground water and surface water hydrologic data gathered from a sufficient number of sources and
7 length of time to characterize the hydrologic regime;
- 8 (l) a plan detailing the design, operation, and monitoring of impounding structures, including but not
9 limited to tailings impoundments and water reservoirs, sufficient to ensure that the structures are safe and
10 stable. For a tailings storage facility, this requirement is met by submission of a design document pursuant to
11 82-4-376, a panel report pursuant to 82-4-377, and a tailings operation, maintenance, and surveillance manual
12 pursuant to 82-4-379 prior to issuance of a draft permit.
- 13 (m) a plan identifying methods to be used to monitor for the accidental discharge of objectionable
14 materials and remedial action plans to be used to control and mitigate discharges to surface or ground water;
- 15 (n) an evaluation of the expected life of any tailings impoundment or waste area and the potential for
16 expansion of the tailings impoundment or waste site. For a tailings storage facility, this requirement is met by
17 submission of a design document pursuant to 82-4-376, a panel report pursuant to 82-4-377, and a tailings
18 operation, maintenance, and surveillance manual pursuant to 82-4-379 prior to issuance of a draft permit.
- 19 (o) an assessment of the potential for the postmining use of mine-related facilities for other industrial
20 purposes, including evidence of consultation with the county commission of the county or counties where the
21 mine or mine-related facilities will be located.
- 22 (6) Except as provided in subsection (8), the permit provided for in subsection (1) for a large-scale
23 mineral development, as defined in 90-6-302, must be conditioned to provide that activities under the permit
24 may not commence until the impact plan is approved under 90-6-307 and until the permittee has provided a
25 written guarantee to the department and to the hard-rock mining impact board of compliance within the time
26 schedule with the commitment made in the approved impact plan, as provided in 90-6-307. If the permittee
27 does not comply with that commitment within the time scheduled, the department, upon receipt of written notice
28 from the hard-rock mining impact board, shall suspend the permit until it receives written notice from the hard-

1 rock mining impact board that the permittee is in compliance.

2 (7) When the department determines that a permittee has become or will become a large-scale
3 mineral developer pursuant to 82-4-339 and 90-6-302 and provides notice as required under 82-4-339, within 6
4 months of receiving the notice, the permittee shall provide the department with proof that the permittee has
5 obtained a waiver of the impact plan requirement from the hard-rock mining impact board or that the permittee
6 has filed an impact plan with the hard-rock mining impact board and the appropriate county or counties. If the
7 permittee does not file the required proof or if the hard-rock mining impact board certifies to the department that
8 the permittee has failed to comply with the hard-rock mining impact review and implementation requirements in
9 Title 90, chapter 6, parts 3 and 4, the department shall suspend the permit until the permittee files the required
10 proof or until the hard-rock mining impact board certifies that the permittee has complied with the hard-rock
11 mining impact review and implementation requirements.

12 (8) Compliance with 90-6-307 is not required for exploration and bulk sampling for metallurgical
13 testing when the aggregate samples are less than 10,000 tons.

14 (9) A person may not be issued an operating permit if:

15 (a) that person's failure, or the failure of any firm or business association of which that person was a
16 principal or controlling member, to comply with the provisions of this part, the rules adopted under this part, or a
17 permit or license issued under this part has resulted in either the receipt of bond proceeds by the department or
18 the completion of reclamation by the person's surety or by the department, unless that person meets the
19 conditions described in 82-4-360;

20 (b) that person has not paid a penalty for which the department has obtained a judgment pursuant to
21 82-4-361;

22 (c) that person has failed to post a reclamation bond required by 82-4-305; or

23 (d) that person has failed to comply with an abatement order issued pursuant to 82-4-362, unless the
24 department has completed the abatement and the person has reimbursed the department for the cost of
25 abatement.

26 (10) A person may not be issued a permit under this part unless, at the time of submission of a bond,
27 the person provides the current information required in subsection (5)(a) and:

28 (a) (i) certifies that the person is not currently in violation in this state of any law, rule, or regulation of

1 this state or of the United States pertaining to air quality, water quality, or mined land reclamation; or

2 (ii) presents a certification by the administering agency that the violation is in the process of being
3 corrected to the agency's satisfaction or is the subject of a bona fide administrative or judicial appeal; and

4 (b) if the person is a partnership, corporation, or other business association, provides the certification
5 required by subsection (10)(a)(i) or (10)(a)(ii), as applicable, for any partners, officers, directors, owners of 10%
6 or more of any class of voting stock, and business association members."

7
8 **Section 187.** Section 82-4-338, MCA, is amended to read:

9 **"82-4-338. Performance bond.** (1) (a) An applicant for an exploration license or operating permit
10 shall file with the department a bond payable to the state of Montana with surety satisfactory to the department
11 in the sum to be determined by the department of not less than \$200 for each acre or fraction of an acre of the
12 disturbed land, conditioned upon the faithful performance of the requirements of this part, the rules of the ~~board~~
13 department, and the permit. In lieu of a bond, the applicant may file with the department a cash deposit, an
14 assignment of a certificate of deposit, an irrevocable letter of credit, or other surety acceptable to the
15 department. The bond may not be less than the estimated cost to the state to ensure compliance with Title 75,
16 chapters 2 and 5, this part, the rules, and the permit, including the potential cost of department management,
17 operation, and maintenance of the site upon temporary or permanent operator insolvency or abandonment,
18 [during a suspension authorized pursuant to 82-4-341(8)(b)(ii) or] until full bond liquidation can be effected.

19 (b) A public or governmental agency may not be required to post a bond under the provisions of this
20 part.

21 (c) A blanket performance bond covering two or more operations may be accepted by the
22 department. A blanket bond must adequately secure the estimated total number of acres of disturbed land.

23 (d) (i) For an exploration license or operating permit authorizing activities on federal land within the
24 state, the department may accept a bond payable to the state of Montana and the federal agency administering
25 the land. The bond must provide at least the same amount of financial guarantee as required by this part.

26 (ii) The bond must provide that the department may forfeit the bond without the concurrence of the
27 federal land management agency. The bond may provide that the federal land management agency may forfeit
28 the bond without the concurrence of the department. Upon forfeiture by either agency, the bond must be

1 payable to the department and may also be payable to the federal land management agency. If the bond is
2 payable to the department and the federal land management agency, the department, before accepting the
3 bond, shall enter into an agreement or memorandum of understanding with the federal land management
4 agency providing for administration of the bond funds in a manner that will allow the department to provide for
5 compliance with the requirements of this part, the rules adopted under this part, and the permit.

6 (iii) The department may not enter into an agreement or memorandum of understanding with a federal
7 land management agency that would require the department to impose requirements on an operator that are
8 more stringent than state law and rules.

9 (2) (a) The department may calculate one or more reclamation plan components within its jurisdiction
10 with the assistance of one or more third-party contractors selected jointly by the department and the applicant
11 and compensated by the applicant when, based on relevant past experience, the department determines that
12 additional expertise is necessary to calculate the bond amount for reclamation plan components. The
13 department may contract for assistance pursuant to this subsection in determining bond amounts for the initial
14 bond and for any subsequent bond review and adjustment. The mine owner is responsible for the first \$5,000 in
15 contractor services provided under this subsection. The mine owner and the department are each responsible
16 for 50% of any amount over \$5,000.

17 (b) To select a third-party contractor as authorized in subsection (2)(a), the department shall prepare
18 a list of no fewer than four contractors acceptable to the department and shall provide the applicant with a copy
19 of the list. The applicant shall provide the department with a list of at least 50% of the contractors from the
20 department's list. The department shall select its contractor from the list provided by the applicant.

21 (3) (a) The department shall conduct an overview of the amount of each bond annually and shall
22 conduct a comprehensive bond review at least every 5 years. The department may conduct additional
23 comprehensive bond reviews if, after modification of a reclamation or operation plan, an annual overview, or an
24 inspection of the permit area, the department determines that an increase of the bond level may be necessary.
25 The department shall consult with the licensee or permittee if a review indicates that the bond level should be
26 adjusted. When determined by the department that the set bonding level of a permit or license does not
27 represent the present costs of compliance with this part, the rules, and the permit, the department shall modify
28 the bonding requirements of that permit or license. The licensee or permittee must have 60 days to negotiate

1 the preliminary bond determination with the department, at the end of which time period the department shall
2 issue the proposed bond determination. The department shall give the licensee or permittee a copy of the bond
3 calculations that form the basis for the proposed bond determination and, for operating permits, publish notice
4 of the proposed bond determination in a newspaper of general circulation in the county in which the operation is
5 located. The department shall issue a final bond determination in 30 days. Unless the licensee or permittee
6 requests a hearing under subsection (3)(b), the licensee or permittee shall post bond with the department in the
7 amount represented by the final bond determination no later than 30 days after issuance of the final bond
8 determination. If the licensee or permittee demonstrates that, through the exercise of reasonable diligence, the
9 licensee or permittee will not be able to post the bond within 30 days, the department shall grant a 30-day
10 extension of the deadline.

11 (b) The permittee or any person with an interest that may be adversely affected may obtain a
12 contested case hearing before the ~~board~~ department board under the provisions of the Montana Administrative
13 Procedure Act, Title 2, chapter 4, part 6, on the final bond determination by filing with the department, within 30
14 days of the issuance of the final bond determination, a written request for hearing stating the reason for the
15 request. The request for hearing must specify the amount of bond increase, if any, that the licensee or
16 permittee considers appropriate and state the reasons that the licensee or permittee considers the department's
17 final bond determination to be excessive. As a condition precedent to any right to request a hearing, the
18 licensee or permittee shall post bond with the department in the amount of the bond increase that the licensee
19 or permittee has stated is appropriate in the request for hearing or the amount that is one-half of the increase
20 contained in the department's final bond determination, whichever amount is greater. If the ~~board~~ department
21 board determines that additional bond is necessary, the licensee or permittee shall post bond in the amount
22 determined by the ~~board~~ department within 30 days of receipt of the ~~board's~~ decision. If the licensee or
23 permittee demonstrates that, through the exercise of reasonable diligence, the licensee or permittee will not be
24 able to post the bond within 30 days, the department shall grant a reasonable extension of the deadline.

25 (c) If a licensee or permittee fails to post bond in accordance with subsection (3)(a) or (3)(b) in the
26 required amounts by the required deadlines, the license or permit is suspended by operation of law and the
27 licensee or permittee shall immediately cease mining and exploration operations until the required bond is
28 posted with and approved by the department.

(4) A bond filed in accordance with the provisions of this part may not be released by the department until the provisions of this part, the rules adopted pursuant to this part, and the permit have been fulfilled.

(5) A bond filed for an operating permit obtained under 82-4-335 may not be released or decreased until the public has been provided an opportunity for a hearing and a hearing has been held if requested. The department shall provide reasonable statewide and local notice of the opportunity for a hearing, including but not limited to publishing the notice in newspapers of general daily circulation.

(6) Except as provided in subsection (7), all bonds required in accordance with the provisions of this section must be based upon reasonably foreseeable activities that the applicant may conduct in order to comply with conditions of an operating permit or license. Bonds may be required only for anticipated activities as described in subsection (1). Only those activities that themselves or in conjunction with other activities have a reasonable possibility of occurring may be bonded. Bond calculations, including calculations for the initial bond or for subsequent bond reviews and adjustments, may not include amounts for any occurrence or contingency that is not a reasonably foreseeable result of any activity conducted by the applicant.

(7) (a) If the department determines, based on unanticipated circumstances that are discovered following the issuance of a mining permit, that a substantial and imminent danger to public health, public safety, or the environment exists or that there is a reasonable probability that a violation of water quality standards will occur, the department may require an operator to submit an amended reclamation plan to address the danger and to post a temporary bond to guarantee the performance of the amended portion of the reclamation plan. The temporary bond may only be required if the anticipated costs associated with the plan amendment would increase the total bond amount for the current plan by more than 10%, as determined in subsection (7)(b).

(b) (i) In determining the need for the temporary bond and the amount of the temporary bond under subsection (7)(a), the department shall select a third-party contractor in consultation with the operator pursuant to subsection (7)(b)(ii) to provide:

(A) a technical engineering analysis and report on the substantial and imminent danger to public health, public safety, or the environment identified in subsection (7)(a); and

(B) the estimated costs of addressing the potential danger in order to establish the amount of the temporary bond.

(ii) The department shall provide the operator with a list of at least four qualified third-party contractors.

1 The operator shall select two qualified third-party contractors from that list. The department shall select its
2 contractor from the list provided by the operator. The operator shall reimburse the department for the
3 reasonable costs of the third-party contractor.

4 (c) An approved interim amended reclamation plan and interim bond must remain in effect until the
5 earlier of:

6 (i) the date that a revised reclamation plan is approved pursuant to 82-4-337 and a permanent bond
7 for the revised reclamation plan is submitted and accepted pursuant to this section; or

8 (ii) 2 years following the date of submission of a complete application pursuant to 82-4-337 to modify
9 the reclamation plan provision or remedy the conditions that created the need to amend the reclamation plan
10 unless the department approves or denies the complete application within 2 years of submission. The applicant
11 may agree to an extension of this deadline.

12 (d) Except as provided in subsection (8), the process provided for in this subsection (7) is not subject
13 to the provisions of Title 75, chapter 1.

14 (8) (a) In determining whether to require amendment of a reclamation plan under subsection (7)(a),
15 the department shall prepare or require the permittee to prepare a written analysis of changes in the
16 reclamation plan that may eliminate or mitigate to an acceptable level the environmental condition. The analysis
17 must include an assessment of the effectiveness of the changes and any potential negative environmental
18 impacts of the changes. The department shall prepare an environmental impact statement pursuant to Title 75,
19 chapter 1, only if the department determines that the changes would not mitigate the condition to an acceptable
20 level or may have potentially significant negative environmental impacts.

21 (b) If the department determines that preparation of an environmental impact statement is necessary,
22 the permittee shall pay the department's costs pursuant to 75-1-205.

23 (9) At the applicant's discretion, bonding in addition to that required by this section may be posted.
24 These unobligated bonds may, on the applicant's request, be applied to future bonds required by this section.

25 (10) (a) If the department determines that there exists at an area permitted or licensed under this part
26 an imminent danger to public health, public safety, or the environment caused by a violation of this part, the
27 rules adopted pursuant to this part, or the permit or license and if the permittee or licensee fails or refuses to
28 expeditiously abate the danger, the department may immediately suspend the permit or license, enter the site,

1 and abate the danger. The department may ~~thereafter~~ institute proceedings to revoke the license or permit,
2 declare the permittee or licensee in default, and forfeit a portion of the bond, not to exceed \$150,000 or 10% of
3 the bond, whichever is less, to be used to abate the danger. The department shall notify the surety of the
4 forfeiture and the forfeiture amount by certified mail, and the surety shall pay the forfeiture amount to the
5 department within 30 days of receipt of the notice. The department shall, as a condition of any termination of
6 the suspension and revocation proceedings, require that the permittee or licensee reimburse the surety, with
7 interest, for any amount paid to and expended by the department pursuant to this subsection (10) and for the
8 actual cost of the surety's expenses in responding to the department's forfeiture demand.

9 (b) If the department is unable to permanently abate the imminent danger using the amount forfeited
10 under subsection (10)(a), the department may forfeit additional amounts under the procedure provided in
11 subsection (10)(a).

12 (c) The department shall return to the surety any money received from the surety pursuant to this
13 subsection (10) and not used by the department to abate the imminent danger. The amount not returned to the
14 surety must be credited to the surety and reduces the penal amount of the bond on a dollar-for-dollar basis.

15 (d) Any interest accrued on bond proceeds that is not required to abate the imminent danger
16 determined in subsection (10)(a) must be returned to the surety, unless otherwise agreed to in writing by the
17 surety.

18 (11) If a bond is terminated as a result of the action or inaction of a licensee or permittee or is canceled
19 or otherwise terminated by the surety issuing the bond and the licensee or permittee fails to post a new bond
20 for the entire amount of the terminated bond within 30 days following the notice of termination provided to the
21 department, then the license or permit must be immediately suspended without further action by the
22 department. (Bracketed language in subsection (1)(a) terminates June 30, 2026--sec. 6, Ch. 458, L. 2019.)"

23
24 **Section 188.** Section 82-4-339, MCA, is amended to read:

25 **"82-4-339. Annual report of activities by permittee -- fee -- notice of large-scale mineral**
26 **developer status.** (1) Within 30 days after completion or abandonment of operations on an area under permit
27 or within 30 days after each anniversary date of the permit, whichever is earlier, or at a later date that may be
28 provided by ~~rules of the board~~ rule and each year after that date until reclamation is completed and approved,

1 the permittee shall pay the annual fee of \$100 and shall file a report of activities completed during the preceding
2 year on a form prescribed by the department. The report must:

3 (a) identify the permittee and the permit number;

4 (b) locate the operation by subdivision, section, township, and range and with relation to the nearest
5 town or other well-known geographic feature;

6 (c) estimate acreage to be newly disturbed by operation in the next 12-month period;

7 (d) include the number of persons on the payroll for the previous permit year and for the next permit
8 year at intervals that the department considers sufficient to enable a determination of the permittee's status
9 under 90-6-302(4);

10 (e) update the information required in 82-4-335(5)(a); and

11 (f) update any maps previously submitted or specifically requested by the department. The maps
12 must show:

13 (i) the permit area;

14 (ii) the unit of disturbed land;

15 (iii) the area to be disturbed during the next 12-month period;

16 (iv) if completed, the date of completion of operations;

17 (v) if not completed, the additional area estimated to be further disturbed by the operation within the
18 following permit year; and

19 (vi) the date of beginning, amount, and current status of reclamation performed during the previous 12
20 months.

21 (2) Whenever the department determines that the permittee has become or will, during the next
22 permit year, become a large-scale mineral developer, it shall immediately serve written notice of that fact on the
23 permittee, the hard-rock mining impact board, and the county or counties in which the operation is located."
24

25 **Section 189.** Section 82-4-342, MCA, is amended to read:

26 **"82-4-342. Amendment to operating permits.** (1) During the term of an operating permit issued
27 under this part, an operator may apply for a permit revision as described in subsections (5)(g) through (5)(j) or
28 an amendment to the permit. The operator may not apply for an amendment to delete disturbed acreage except

following reclamation, as required under 82-4-336, and bond release for the disturbance, as required under 82-4-338.

(2) (a) The ~~board~~department may by rule establish criteria for the classification of amendments as major or minor. The ~~board~~department shall adopt rules establishing requirements for the content of applications for revisions and major and minor amendments and the procedures for processing revisions and minor amendments.

(b) An amendment must be considered minor if:

(i) it is for the purpose of retention of mine-related facilities that are valuable for postmining use;
(ii) evidence is submitted showing that a local government has requested retention of the mine-related facilities for a postmining use; and

(iii) the postmining use of the mine-related facilities meets the requirements provided for in 82-4-336.

(3) Applications for major amendments must be processed pursuant to 82-4-337.

(4) The department shall review an application for a revision or a minor amendment and provide a notice of decision on the adequacy of the application within 30 days. If the department does not respond within 30 days, then the permit is revised or amended in accordance with the application.

(5) The department is not required to prepare an environmental assessment or an environmental impact statement for the following categories of action and permit revisions:

(a) actions that qualify for a categorical exclusion as defined by rule or justified by a programmatic review pursuant to Title 75, chapter 1;

(b) administrative actions, such as routine, clerical, or similar functions of a department, including but not limited to administrative procurement, contracts for consulting services, and personnel actions;

(c) repair or maintenance of the permittee's equipment or facilities;

(d) investigation and enforcement actions, such as data collection, inspection of facilities, or enforcement of environmental standards;

(e) ministerial actions, such as actions in which the agency does not exercise discretion, but acts upon a given state of facts in a prescribed manner;

(f) approval of actions that are primarily social or economic in nature and that do not otherwise affect the human environment;

(g) changes in a permit boundary that increase disturbed acres that are insignificant in impact relative to the entire operation, provided that the increase is less than 25 acres or 10% of the permitted area, whichever is less;

(h) changes to an approved reclamation plan if the changes are consistent with this part and rules adopted pursuant to this part;

(i) changes in an approved operating plan for an activity that was previously permitted if the changes will be insignificant relative to the entire operation and the changes are consistent with subsection (5)(g);

(j) changes in a permit for the purpose of retention of mine-related facilities that are valuable for postmining use; and

(k) modifications to a tailings storage facility that result in a minor expansion to the facility if:

(i) the proposed modification is certified by the seal of the engineer of record;

(ii) the capacity increase resulting from the expansion is no greater than 15% of the capacity of the existing tailings storage facility; and

(iii) the modification complies with 82-4-376(2)(l) and (2)(dd) and is exempt under subsection (5)(g), (5)(h), or (5)(i) of this section."

Section 190. ~~Section 82-4-353, MCA, is amended to read:~~

~~"82-4-353. (Temporary) Administrative remedies—notice—appeals—parties. (1) Upon receipt of an application for an operating permit, the department shall provide notice of the application by publication in a newspaper of general circulation in the area to be affected by the operation. The notice must be published once a week for 3 successive weeks.~~

~~(2) An applicant for a permit or license or for an amendment or revision to a permit or license may request a hearing on a denial of the application by submitting a written request for a hearing within 30 days of receipt of written notice of the denial. The request must state the reason that the hearing is requested.~~

~~(3) All hearings and appeals under 82-4-337(4), 82-4-338(3)(b), 82-4-341(7) and (9), 82-4-361, 82-4-362, and subsection (2) of this section must be conducted by the board department in accordance with the Montana Administrative Procedure Act. Any person whose interests may be adversely affected as a result of an action taken pursuant to this part may become a party to any proceeding held under this part upon a showing~~

1 ~~that the person is capable of adequately representing the interests claimed.~~

2 ~~(4) As used in this section, "person" means any individual, corporation, partnership, or other legal~~
3 ~~entity. (Terminates June 30, 2026 -- sec. 6, Ch. 458, L. 2019.)~~

4 ~~**82-4-353. (Effective July 1, 2026) Administrative remedies -- notice -- appeals -- parties. (1)**~~
5 ~~Upon receipt of an application for an operating permit, the department shall provide notice of the application by~~
6 ~~publication in a newspaper of general circulation in the area to be affected by the operation. The notice must be~~
7 ~~published once a week for 3 successive weeks.~~

8 ~~(2) An applicant for a permit or license or for an amendment or revision to a permit or license may~~
9 ~~request a hearing on a denial of the application by submitting a written request for a hearing within 30 days of~~
10 ~~receipt of written notice of the denial. The request must state the reason that the hearing is requested.~~

11 ~~(3) All hearings and appeals under 82-4-337(4), 82-4-338(3)(b), 82-4-341(7) and (8), 82-4-361, 82-4-~~
12 ~~362, and subsection (2) of this section must be conducted by the board department in accordance with the~~
13 ~~Montana Administrative Procedure Act. Any person whose interests may be adversely affected as a result of an~~
14 ~~action taken pursuant to this part may become a party to any proceeding held under this part upon a showing~~
15 ~~that the person is capable of adequately representing the interests claimed.~~

16 ~~(4) As used in this section, "person" means any individual, corporation, partnership, or other legal~~
17 ~~entity."~~

18
19 **Section 191.** ~~Section 82-4-361, MCA, is amended to read:~~

20 ~~**"82-4-361. Violation -- penalties -- waiver. (1)** When the department has reason to believe that a~~
21 ~~person is in violation of this part, a rule adopted or an order issued under this part, or a term or condition of a~~
22 ~~permit issued under this part, it shall send a violation letter to the person. The violation letter must describe the~~
23 ~~provision of the statute, rule, order, or permit alleged to be violated and the facts alleged to constitute the~~
24 ~~violation. The letter must also recommend corrective actions that are necessary to return to compliance.~~
25 ~~Issuance of a violation letter under this subsection does not limit the authority of the department under this part~~
26 ~~to bring a judicial action for penalties or injunctive relief or to initiate an administrative enforcement action.~~

27 ~~(2) (a) By issuance of an order pursuant to subsection (6), the department may assess an~~
28 ~~administrative penalty of not less than \$100 or more than \$1,000 for each of the following violations and an~~

~~additional administrative penalty of not less than \$100 or more than \$1,000 for each day during which the violation continues and may bring an action for an injunction from continuing the violation against:~~

~~(i) a person or operator who violates a provision of this part, a rule adopted or an order issued under this part, or a term or condition of a permit; or~~

~~(ii) any director, officer, or agent of a corporation who purposely or knowingly authorizes, orders, or carries out a violation of a provision of this part, a rule adopted or an order issued under this part, or a term or condition of a permit.~~

~~(b) If the violation created an imminent danger to the health or safety of the public or caused significant environmental harm, the maximum administrative penalty is \$5,000 for each day of violation.~~

~~(c) This subsection does not limit the authority of the department to bring a judicial action for penalties or injunctive relief prior to or instead of initiating an administrative enforcement action under this part.~~

~~(3) The department may bring a judicial action seeking a penalty of not more than \$5,000 for a violation listed in subsection (2)(a) and a penalty of not more than \$5,000 for each day that the violation continues.~~

~~(4) Penalties assessed under this section must be determined in accordance with the penalty factors in 82-4-1001.~~

~~(5) The department may bring an action for a restraining order or a temporary or permanent injunction against an operator or other person violating or threatening to violate an order issued under this part.~~

~~(6) (a) In addition to the violation letter sent pursuant to subsection (1), the department may also issue an order if it has credible information that a violation listed in subsection (2) has occurred. The order must specify the provision of the part, rule, order, or permit alleged to be violated and the facts alleged to constitute the violation. The order may require necessary corrective action within a reasonable period of time, may assess an administrative penalty determined in accordance with this section, or both. The order must be served personally or by certified mail.~~

~~(b) An order issued pursuant to subsection (6)(a) becomes final unless, within 30 days after the order is served, the person to whom the order is issued submits to the board department a written request for a hearing stating the reason for the request. Service of the order by mail is complete 3 business days after mailing. If a request for a hearing is submitted, a hearing must be held within a reasonable time under the~~

~~contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6. After a hearing, the board department shall affirm, modify, or rescind the order.~~

~~(7) Legal actions for penalties or injunctive relief under this section must be brought in the district court of the county in which the alleged violation occurred or, if mutually agreed to by the parties to the action, in the first judicial district, Lewis and Clark County."~~

Section 192. ~~Section 82-4-362, MCA, is amended to read:~~

~~**"82-4-362. Suspension of permits -- hearing.** (1) If any of the requirements of this part, of the rules adopted under this part, or of a license or permit has not been complied with, the department shall serve a notice of violation on the licensee or permittee or, if necessary, the director shall order the suspension of the license or permit. A license or permit may also be suspended for failure to comply with an order to pay a civil penalty if the order is not subject to administrative or judicial review. The director may order immediate suspension of a license or permit whenever the director finds that a violation of this part, of the rules adopted under this part, or of a license or permit is creating an imminent danger to the health or safety of persons outside the permit area. The notice or order must be handed to the licensee or permittee in person or served on the licensee or permittee by certified mail addressed to the permanent address shown on the application for a license or permit. The notice of violation or order of suspension must specify the provision of this part, the rules adopted under this part, or the license or permit violated and the facts alleged to constitute the violation and must, if the violation has not been abated, order abatement within a specified time period.~~

~~(2) If the licensee or permittee has not complied with the requirements set forth in the notice of violation or order of suspension within the time limits set in the notice or order, the license or permit may be revoked by order of the department and the performance bond forfeited to the department. The notice of violation or order of suspension must state when those measures may be undertaken and must give notice of the opportunity for a hearing before the board department. A hearing may be requested by submitting a written request stating the reason for the request to the board department within 30 days after receipt of the notice or order. If a hearing is requested within the 30-day period, the license or permit may not be revoked and the bond may not be forfeited until a final decision is made by the board department.~~

~~(3) If a permittee fails to pay the fee or file the report required under 82-4-339, the department shall~~

~~serve notice of this failure, by certified mail or personal delivery, on the permittee. If the permittee does not comply within 30 days of receipt of the notice, the director shall suspend the permit. The director shall reinstate the permit upon compliance."~~

Section 193. Section 82-4-371, MCA, is amended to read:

"82-4-371. Reclamation of abandoned mine sites. (1) Agents, employees, or contractors of the department may enter upon property for the purpose of conducting studies or exploratory work to determine whether the property has been mined and not reclaimed and rehabilitated in accordance with the requirements of this part and to determine the feasibility of restoration or reclamation of the property or abatement, control, or prevention of the adverse effects of past mining practices. The department may bring an injunctive action to restrain interference with the exercise of the right to enter and inspect granted in this subsection.

(2) (a) The department may enter upon property pursuant to subsection (2)(b) if it makes a finding that:

(i) land or water resources on the property have been adversely affected by past mining practices;

(ii) the adverse effects are at a stage that, in the public interest, action to restore or reclaim the property or to abate, control, or prevent the adverse effects should be taken; and

(iii) the owners of the land or water resources where entry must be made to restore or reclaim the property or to abate, control, or prevent the adverse effects of past mining practices are not known or readily available or the owners will not give permission for the department or its agents, employees, or contractors to enter upon the property to restore or reclaim the property or to abate, control, or prevent the adverse effects of past mining practices.

(b) If the department has made findings pursuant to subsection (2)(a), agents, employees, or contractors of the department may enter upon property adversely affected by past mining practices and other property necessary for access to the adversely affected property to do all things necessary or expedient to restore or reclaim the property or to abate, control, or prevent the adverse effects of past mining practices after:

(i) giving notice by mail to the owner, if known, and a purchaser under contract for deed, if known; or

(ii) if neither is known, posting notice upon the property and advertising in a newspaper of general circulation in the county in which the property lies.

(c) Entry upon property pursuant to this section is not an act of condemnation of property or of trespass but rather an exercise of the power granted by Article IX, sections 1 and 2, of the Montana constitution.

(3) The ~~board~~department may acquire the necessary property by gift or purchase. A gift or purchase must be approved by the board of land commissioners. If the property cannot be acquired by gift or purchase at a reasonable cost, proceedings may be instituted in the manner provided in Title 70, chapter 30, against all nonaccepting landholders if:

(a) acquisition of the property is necessary for successful reclamation;

(b) the acquired property after restoration or reclamation or after abatement, control, or prevention of the adverse effects of past mining practices will serve recreation and historic purposes or conservation and reclamation purposes or provide open space benefits; and

(c) (i) permanent facilities, such as treatment plants or relocated stream channels, will be constructed on the property for the restoration or reclamation of the property or for abatement, control, or prevention of the adverse effects of past mining practices; or

(ii) acquisition of refuse disposal sites and all refuse on the sites will serve the purposes of this part in that public ownership is desirable to meet emergency situations and prevent recurrences of the adverse effects of past mining practices.

(4) The department may record in the office of the clerk and recorder in the county in which property that has been reclaimed pursuant to 82-4-424 or this section is located a notice that the property has been mined and reclaimed. The notice must include the date and a brief description of the reclamation."

Section 194. ~~Section 82-4-403, MCA, is amended to read:~~

~~"82-4-403. Definitions. When used in this part, unless a different meaning clearly appears from the context, the following definitions apply:~~

~~(1) "Affected land" means the area of land and land covered by water that is disturbed by open cut operations. A private road may be included as affected land only with the landowner's consent.~~

~~(2) "Amendment" means a change to the approved permit.~~

~~(3) "Board" means the board of environmental review provided for in 2-15-3502.~~

- 1 ~~(4) (3) "Department" means the department of environmental quality provided for in 2-15-3501.~~
- 2 ~~(5) (4) "Landowner" means the holder of legal title to land subjected to an opencut operation.~~
- 3 ~~(6) (5) "Materials" means bentonite, clay, scoria, peat, sand, soil, gravel, or mixtures of those~~
- 4 ~~substances.~~
- 5 ~~(7) (6) "Opencut operation" means activities conducted for the primary purpose of sale or utilization of~~
- 6 ~~materials, including:~~
- 7 ~~(a) mine site preparation;~~
- 8 ~~(b) (i) removing the overburden and mining directly from the exposed natural deposits; or~~
- 9 ~~(ii) mining directly from natural deposits of materials;~~
- 10 ~~(c) processing of materials mined from the natural deposits, except that processing facilities located~~
- 11 ~~more than 300 feet from where materials were mined or are permitted to be mined are not part of the opencut~~
- 12 ~~operation;~~
- 13 ~~(d) transporting, depositing, staging, and stockpiling of overburden and materials unless the activity~~
- 14 ~~occurs more than 300 feet from where the materials were mined or are permitted to be mined;~~
- 15 ~~(e) storing or stockpiling of materials at processing facilities that are part of the opencut operation;~~
- 16 ~~(f) reclamation of affected land; and~~
- 17 ~~(g) parking or staging of vehicles, equipment, or supplies unless:~~
- 18 ~~(i) the activity is separated from other opencut operations by at least 25 feet and is connected to the~~
- 19 ~~opencut operation by a single road that is no more than 25 feet wide; or~~
- 20 ~~(ii) the activity is inside the construction disturbance area shown on a construction project plan.~~
- 21 ~~(8) (7) "Operator" means a person who holds a permit issued pursuant to this part. For purposes of~~
- 22 ~~enforcing the provisions of this part, the term also includes any person conducting opencut operations on~~
- 23 ~~affected land that is not covered by a permit.~~
- 24 ~~(9) (8) "Overburden" means the earth that lies above a natural deposit of materials.~~
- 25 ~~(10) (9) "Person" means:~~
- 26 ~~(a) a natural person;~~
- 27 ~~(b) a firm, association, partnership, cooperative, or corporation;~~
- 28 ~~(c) a department, agency, or instrumentality of the state or any governmental subdivision; or~~

~~(d) any other entity.~~

~~(11) (10) "Plan of operation" means a plan that:~~

~~(a) meets the requirements of 82-4-434; and~~

~~(b) contains a description of current land use, topographical data, hydrologic data, soils data, proposed mine areas, proposed mining and processing operations, proposed reclamation, and appropriate maps.~~

~~(12) (11) "Processing facilities" means:~~

~~(a) crushers, screens, and pug mills;~~

~~(b) asphalt, wash, and concrete plants;~~

~~(c) treatment, sedimentation, or retention areas for processing facilities; and~~

~~(d) areas receiving washout from vehicles and equipment using the processing facilities.~~

~~(13) (12) "Reclamation" means the reconditioning of affected land to make the area suitable for productive use, including but not limited to forestry, agriculture, grazing, wildlife, recreation, or residential or industrial development.~~

~~(14) (13) "Soil" means the dark or root-bearing surface matter that has been generated through time by the interaction of biological activity, climate, topography, and parent material and that is capable of sustaining plant growth and is recognized and identified as such by standard authorities and methods."~~

Section 195. Section 82-4-406, MCA, is amended to read:

"82-4-406. Exemption -- opencut operations on federal and state lands. This part is not applicable to operations on certain federal and state lands as specified by the ~~board~~ department, provided it is first determined by the ~~board~~ department that laws, regulations, or rules administered or issued by the federal or state agency administering or having jurisdiction over the affected land impose controls for opencut operations on those lands equal to or greater than those imposed by this part."

Section 196. Section 82-4-422, MCA, is amended to read:

"82-4-422. Powers, duties, and functions. (1) The department has the powers, duties, and functions to:

(a) issue permits when, on the basis of the information set forth in the application and an evaluation of the proposed opencut operations, the department finds that the requirements of this part and rules adopted to implement this part will be observed;

(b) amend permits in accordance with the provisions of 82-4-436;

(c) reclaim any affected land with respect to which a bond has been forfeited;

(d) make investigations or inspections that are considered necessary to ensure compliance with any provision of this part; and

(e) enforce and administer the provisions of this part and issue orders necessary to implement the provisions of this part.

(2) The ~~board~~ department shall:

(a) adopt rules that pertain to opencut operations in order to accomplish the purposes of this part;

(b) adopt rules:

(i) establishing uniform procedures for filing of necessary records;

(ii) providing procedures for the issuance of permits and filing of annual reports; and

(iii) providing other administrative requirements ~~that the board considers~~ necessary to implement this part; ~~and.~~

~~(c)(3)~~ The board shall conduct hearings and, for the purposes of conducting those hearings, administer oaths and affirmations, subpoena witnesses, compel attendance of witnesses, hear evidence, and require the production of any books, papers, correspondence, memoranda, agreements, documents, or other records relevant or material to the inquiry."

Section 197. ~~Section 82-4-427, MCA, is amended to read:~~

~~"82-4-427. Hearing -- appeal -- venue. (1) (a) Subject to subsections (1)(b) and (1)(c), a person whose interests are or may be adversely affected by a final decision of the department to approve or disapprove a permit application and accompanying material or a permit amendment application and accompanying material under this part is entitled to a hearing before the board department if a written request stating the reasons for the appeal is submitted to the board department within 30 days of the department's decision.~~

~~(b) If an application was noticed publicly as required by this part, to be eligible to file for an appeal a person must have either submitted comments to the department on an application or submitted comments at a public meeting held under 82-4-432.~~

~~(c) Subsection (1)(b) does not apply to a person filing for an appeal of an application that was not required to be noticed publicly by this part.~~

~~(2) An operator may request a hearing before the board department on:~~

~~(a) a final decision of the department director pursuant to 82-4-436(4) by submitting a request for a hearing within 15 days of receipt of notice of the director's decision; and~~

~~(b) an order of suspension or revocation issued under 82-4-442 by filing a request for hearing within 30 days of receipt of the decision.~~

~~(3) The operator or the landowner may request a hearing before the board department on a decision on a bond release application by submitting a written request stating the reasons for the appeal within 30 days of the receipt of the decision.~~

~~(4) The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing held under this section.~~

~~(5) A petition for judicial review of a board department decision made pursuant to this section must be brought in the county in which the permitted activity is proposed to occur or, if mutually agreed upon by both parties in the action, in the first judicial district, Lewis and Clark County. If an activity is proposed to occur in more than one county, the action may be brought in any of the counties in which the activity is proposed to occur.~~

~~(6) The petition for judicial review must include the party to whom the permit was issued or the applicant unless otherwise agreed to by the permitholder or applicant. All judicial challenges of permits for projects with a project cost, as determined by the court, of more than \$1 million must have precedence over any civil cause of a different nature pending in that court. If the court determines that the challenge was without merit or was for an improper purpose, such as to harass, to cause unnecessary delay, or to impose needless or increased cost in litigation, the court may award attorney fees and costs incurred in defending the action."~~

Section 198. Section 82-4-437, MCA, is amended to read:

1 **"82-4-437. Annual report -- fees.** (1) For each opencut operation, the operator shall file an annual
2 report on a form furnished by the department. The report must contain the information and be submitted at
3 times provided in rules of the ~~board~~ department.

4 (2) (a) Except as provided in subsection (2)(b), each opencut operation shall submit with the annual
5 report a fee of 4.5 cents per cubic yard of materials for all operations mined during the period covered by the
6 report.

7 (b) Opencut operations that mine, extract, or produce bentonite are not subject to the fee in
8 subsection (2)(a).

9 (3) The department:

10 (a) shall require the operator to pay the following fees:

11 (i) \$1,500 for each permit application submitted pursuant to 82-4-432(1); and

12 (ii) for each amendment application submitted pursuant to 82-4-432(11):

13 (A) \$750 if the date of the amendment application is 10 years or less from the date of the permit
14 approval; or

15 (B) \$1,500 if the date of the amendment application is more than 10 years from the date of the permit
16 approval; and

17 (b) shall adopt rules for applications or responses that are administrative. Fees, if any, for
18 administrative actions identified under this subsection (3) may not exceed \$250.

19 (4) Pursuant to the provisions of 82-4-441, a person who mines materials without a permit in violation
20 of this part shall submit a report and the fees required by subsections (2)(a) and (3)(a)(i) of this section."

21
22 **Section 199.** ~~Section 82-4-441, MCA, is amended to read:~~

23 ~~"82-4-441. Administrative and judicial penalties -- enforcement. (1) When the department has~~
24 ~~reason to believe that a person is in violation of this part, a rule adopted or an order issued under this part, or a~~
25 ~~term or condition of a permit issued under this part, it shall send a violation letter to the person. The violation~~
26 ~~letter must describe the provision of the statute, rule, order, or permit alleged to be violated and the facts~~
27 ~~alleged to constitute the violation. The letter must also recommend corrective actions that are necessary to~~
28 ~~return to compliance. Issuance of a violation letter under this subsection does not limit the authority of the~~

~~department under this part to bring a judicial action for penalties or injunctive relief or to initiate an administrative enforcement action.~~

~~(2) By issuance of an order pursuant to subsection (5), the department may assess against a person who violates any of the provisions of this part, rules adopted or orders issued under this part, or provisions of a permit:~~

~~(a) an administrative penalty of not less than \$100 or more than \$1,000 for the violation; and~~

~~(b) an additional administrative penalty of not less than \$100 or more than \$1,000 for each day during which a violation continues.~~

~~(3) The department may bring a judicial action seeking a penalty of not more than \$5,000 against a person who violates any of the provisions of this part, rules adopted or orders issued under this part, or provisions of a permit and a penalty of not more than \$5,000 for each day that the violation continues. In determining the amount of the penalty, the district court shall consider the factors in subsection (4).~~

~~(4) Penalties assessed under this section must be determined in accordance with the penalty factors in 82-4-1001.~~

~~(5) (a) In addition to the violation letter sent pursuant to subsection (1), the department may also issue an order if it has credible information that a violation listed in subsection (2) has occurred. The order must specify the provision of the part, rule, order, or permit alleged to be violated and the facts alleged to constitute the violation. The order may require necessary corrective action within a reasonable period of time, may assess an administrative penalty determined in accordance with this section, or both. The order must be served personally or by certified mail.~~

~~(b) An order issued pursuant to subsection (5)(a) becomes final unless, within 30 days after the order is served, the person to whom the order is issued submits to the board department a written request for a hearing stating the reason for the request. Service of an order by mail is complete 3 business days after mailing. If a request for a hearing is filed, a hearing must be held within a reasonable time under the contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6. After a hearing, the board department shall affirm, modify, or rescind the order.~~

~~(6) The department may bring an action to enjoin an operator or other person violating or threatening to violate this part, rules adopted pursuant to this part, or a permit issued pursuant to this part. Actions for~~

~~injunctions or penalties must be filed in the district court of the county in which the open-cut operation is located or, if mutually agreed on by both parties in the action, in the first judicial district, Lewis and Clark County.~~

~~(7) The provisions of this section do not limit the authority of the department to bring a judicial action for penalties or injunctive relief prior to or instead of initiating an administrative enforcement action under this part."~~

Section 200. ~~Section 82-4-442, MCA, is amended to read:~~

~~**"82-4-442. — Suspension and revocation orders. (1) (a)** The department may, after affording the operator an opportunity for an informal conference, order the suspension of a permit if:~~

~~(i) the operator fails to comply with a penalty order or a corrective action order issued pursuant to 82-4-441; or~~

~~(ii) the operator has violated this part, a rule adopted pursuant to this part, or the permit and the violation could reasonably be expected to create a danger to the health or safety of persons outside the permit area or significant environmental harm to land, air, or water. The order of suspension must be served on the operator personally or by certified mail addressed to the permanent address shown on the most recently filed annual report. The order of suspension must specify the provision of this part, the rules adopted under this part, or the permit violated and the facts alleged to constitute the violation and must, if the violation has not been corrected, order corrective action within a specified time period.~~

~~(b) The department may order immediate suspension of a permit whenever it finds that a violation of this part, the rules adopted under this part, or a permit is creating an imminent danger to the health or safety of persons outside the permit area. The order must require immediate corrective action.~~

~~(c) The operator upon whom an order is served may file a request for hearing with the board department within 30 days of service of the order. The request for hearing must specify the reason for the request. The filing of a request for hearing on an order issued does not stay the suspension or corrective action requirement, but the board department may, upon written request of the operator, stay either or both of these requirements.~~

~~(2) If the operator has not complied with the requirements set forth in the order of suspension within the time limits set in the order, the permit may be revoked by order of the department and the performance~~

~~bond forfeited to the department. The operator may request a hearing before the board department by submitting a written request stating the reason for the request to the board department within 30 days after service of the order. If a hearing is requested within the 30-day period, the permit may not be revoked and the bond may not be forfeited until the board department makes a final decision.~~

~~(3) If an operator fails to file the report required under 82-4-437, the department shall serve personally or by certified mail a notice letter informing the operator of the failure. If the operator does not file the report within 30 days of receipt of the letter, the department may issue a penalty order pursuant to 82-4-441 or a suspension order pursuant to this section. If the permit has been suspended, the department shall reinstate the permit upon compliance.~~

~~(4) Maintenance, monitoring, reporting, reclamation, and other activities required by statute, rule, or the permit and intended to protect public health or safety or the environment must continue during any period of suspension unless otherwise provided in the order."~~

Section 201. Section 82-4-445, MCA, is amended to read:

"82-4-445. Reclamation of abandoned mine sites. (1) Agents, employees, or contractors of the department may enter upon property for the purpose of conducting studies or exploratory work to determine whether the property has been mined and not reclaimed and rehabilitated in accordance with the requirements of this part and to determine the feasibility of restoration or reclamation of the property or abatement, control, or prevention of the adverse effects of past mining practices. The department may bring an injunctive action to restrain interference with the exercise of the right to enter and inspect granted in this subsection.

(2) (a) The department may enter upon property pursuant to subsection (2)(b) if it makes a finding that:

- (i) land or water resources on the property have been adversely affected by past mining practices;
- (ii) the adverse effects are at a stage that, in the public interest, action to restore or reclaim the property or to abate, control, or prevent the adverse effects should be taken; and
- (iii) the owners of the land or water resources where entry must be made to restore or reclaim the property or to abate, control, or prevent the adverse effects of past mining practices are not known or readily available or the owners will not give permission for the department or its agents, employees, or contractors to

enter upon the property to restore or reclaim the property or to abate, control, or prevent the adverse effects of past mining practices.

(b) If the department has made findings pursuant to subsection (2)(a), agents, employees, or contractors of the department may enter upon property adversely affected by past mining practices and other property necessary for access to the adversely affected property to do all things necessary or expedient to restore or reclaim the property or to abate, control, or prevent the adverse effects of past mining practices after:

(i) giving notice by mail to the owner, if known, and a purchaser under contract for deed, if known; or
(ii) if neither is known, posting notice upon the property and advertising in a newspaper of general circulation in the county in which the property lies.

(c) Entry upon property pursuant to this section is not an act of condemnation of property or of trespass but rather an exercise of the power granted by Article IX, sections 1 and 2, of the Montana constitution.

(3) The ~~board~~department may acquire the necessary property by gift or purchase, or if the property cannot be acquired by gift or purchase at a reasonable cost, proceedings may be instituted in the manner provided in Title 70, chapter 30, against all nonaccepting landholders if:

(a) acquisition of the property is necessary for successful reclamation;
(b) the acquired property after restoration or reclamation or after abatement, control, or prevention of the adverse effects of past mining practices will serve recreation and historic purposes or conservation and reclamation purposes or provide open space benefits; and
(c) (i) permanent facilities, such as treatment plants or relocated stream channels, will be constructed on the property for the restoration or reclamation of the property or for abatement, control, or prevention of the adverse effects of past mining practices; or
(ii) acquisition of refuse disposal sites and all refuse on the sites will serve the purposes of this part in that public ownership is desirable to meet emergency situations and prevent recurrences of the adverse effects of past mining practices.

(4) The department may record in the office of the clerk and recorder in the county in which property that has been reclaimed pursuant to 82-4-424 or this section is located a notice that the property has been mined and reclaimed. The notice must include the date and a brief description of the reclamation."

1

2 **Section 202.** Section 82-4-1001, MCA, is amended to read:

3 **"82-4-1001. Penalty factors.** (1) In determining the amount of an administrative or civil penalty
4 assessed under the statutes listed in subsection (4), the department of environmental quality or the district
5 court, as appropriate, shall take into account the following factors:

6 (a) the nature, extent, and gravity of the violation;

7 (b) the circumstances of the violation;

8 (c) the violator's prior history of any violation, which:

9 (i) must be a violation of a requirement under the authority of the same chapter and part as the
10 violation for which the penalty is being assessed;

11 (ii) must be documented in an administrative order or a judicial order or judgment issued within 3 years
12 prior to the date of the occurrence of the violation for which the penalty is being assessed; and

13 (iii) may not, at the time that the penalty is being assessed, be undergoing or subject to administrative
14 appeal or judicial review;

15 (d) the economic benefit or savings resulting from the violator's action;

16 (e) the violator's good faith and cooperation;

17 (f) the amounts voluntarily expended by the violator, beyond what is required by law or order, to
18 address or mitigate the violation or impacts of the violation; and

19 (g) other matters that justice may require.

20 (2) Except for penalties assessed under 82-4-254, after the amount of a penalty is determined under
21 (1), the department of environmental quality or the district court, as appropriate, may consider the violator's
22 financial ability to pay the penalty and may institute a payment schedule or suspend all or a portion of the
23 penalty.

24 (3) Except for penalties assessed under 82-4-254, the department of environmental quality may
25 accept a supplemental environmental project as mitigation for a portion of the penalty. For purposes of this
26 section, a "supplemental environmental project" is an environmentally beneficial project that a violator agrees to
27 undertake in settlement of an enforcement action but which the violator is not otherwise legally required to
28 perform.

(4) This section applies to penalties assessed by the department of environmental quality or the district court under 82-4-141, 82-4-254, 82-4-361, and 82-4-441.

(5) The ~~board of environmental review and the~~ department of environmental quality may, ~~for the statutes listed in subsection (4) for which each has rulemaking authority,~~ adopt rules to implement this section."

Section 203. Section 82-15-102, MCA, is amended to read:

"82-15-102. Enforcement of part -- rules. (1) Except as provided in subsection (2), this part must be enforced by the department. It may adopt necessary and reasonable rules for the implementation of the provisions and intent of this part, and those rules have the effect of law.

(2) Section 82-15-110(8) must be enforced by the department of environmental quality.

(3) The ~~board of environmental review~~ department of environmental quality shall adopt rules for the regulation of methyl tertiary butyl ether in accordance with this part. The rules must establish:

(a) a trace level or trace levels of methyl tertiary butyl ether that may be contained in gasoline that is imported into the state, stored, distributed, sold, offered or exposed for sale, or dispensed in the state of Montana. The ~~board~~ department of environmental quality shall establish trace levels in a manner that prevents the intentional addition of methyl tertiary butyl ether to gasoline but that allows for a residual amount of methyl tertiary butyl ether to remain in tanks following implementation of 82-15-110(8).

(b) reasonable sampling and reporting requirements; and

(c) requirements that the ~~board~~ department of environmental quality determines are reasonable and necessary for implementation of the portions of this part that apply to methyl tertiary butyl ether."

Section 204. ~~Section 82-15-120, MCA, is amended to read:~~

~~"82-15-120. Department of environmental quality to enforce prohibition on methyl tertiary butyl ether -- notice requirements -- hearing -- penalties. (1) (a) Whenever the department of environmental quality believes that a violation of 82-15-110(8) or of the rules adopted pursuant to 82-15-102(3) has occurred, it may serve written notice of the violation on the alleged violator or an agent of the alleged violator.~~

~~(b) The notice must specify the facts alleged to constitute a violation and may include an order assessing an administrative penalty pursuant to subsection (3), an order to take necessary corrective action~~

~~within a reasonable period of time stated in the order, or both.~~

~~(c) The order becomes final unless, within 30 days after the notice is served, the person named in the order requests in writing a hearing before the board of environmental review department of environmental quality. Service by mail is complete on the date of mailing.~~

~~(d) Upon receipt of the request, the board of environmental review department of environmental quality shall schedule a hearing. The contested case provisions of the Montana Administrative Procedure Act provided in Title 2, chapter 4, part 6, apply to a hearing conducted under this section.~~

~~(2) If, after a hearing held under subsection (1), the board of environmental review department of environmental quality finds that a violation has occurred, it shall either affirm or modify the its order of the department of environmental quality. An order issued by the department of environmental quality or by the board of environmental review may prescribe the date by which the violation must cease and may prescribe time limits for a particular action. If, after hearing, the board of environmental review department of environmental quality finds no violation has occurred, it shall rescind the department of environmental quality's order.~~

~~(3) A violation of 82-15-110(8) or of a rule adopted pursuant to 82-15-102(3) is subject to an administrative penalty of up to \$1,000. Each day of violation constitutes a separate violation.~~

~~(4) Any person who violates 82-15-110(8), a rule adopted pursuant to 82-15-102(3), or an order issued under this section is subject to a civil penalty not to exceed \$5,000 for each violation. Each day of violation constitutes a separate violation.~~

~~(5) The department of environmental quality is authorized to commence a civil action seeking appropriate relief, including temporary and permanent injunctions and penalties under subsection (4) of this section, for a violation of 82-15-110(8), a rule adopted pursuant to 82-15-102(3), or a violation of an order issued under this section. The action must be brought in the district court of the first judicial district, Lewis and Clark County, or in the district court of the county in which the violation occurred."~~

NEW SECTION. Section 205. Repealer. The following sections of the Montana Code Annotated are repealed:

~~2-15-3502. Board of environmental review.~~

Amendment - 1st Reading - Requested by: Duane Ankney

67th Legislature

Drafter: Joe Kolman, 406-444-3747

SB 233.1.1

1 ~~75-2-111. Powers of board.~~

2 75-6-103. Duties of board.

3 75-10-106. Duties of board.

4 82-4-111. Rules of board -- hearings.

5 82-4-204. Board rules.

6

7 ~~NEW SECTION. Section 206. **Name change -- directions to code commissioner.** Wherever a~~
8 ~~reference to the board of environmental review, meaning the board established in 2-15-3502, appears in~~
9 ~~legislation enacted by the 2021 legislature, the code commissioner is directed to change it to an appropriate~~
10 ~~reference to the department of environmental quality.~~

11

12 NEW SECTION. Section 207. Transition. Rulemaking authority and existing rules under the
13 jurisdiction of the board of environmental review are transferred to the department of environmental quality on
14 [the effective date of this act].

15

16 NEW SECTION. Section 208. Effective date. [This act] is effective July 1, 2021.

17

18 - END -

SENATE BILL NO. 233

INTRODUCED BY D. ANKNEY

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATED TO THE BOARD OF ENVIRONMENTAL REVIEW; REASSIGNING DUTIES AND POWERS OF THE BOARD OF ENVIRONMENTAL REVIEW; TRANSFERRING RULEMAKING AUTHORITY; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTIONS 7-13-4502, 7-13-4513, 7-13-4517, 15-24-3001, 37-42-102, 37-42-321, 50-2-116, 50-79-401, 50-79-403, 75-1-220, 75-1-1001, 75-2-103, 75-2-104, 75-2-105, 75-2-112, 75-2-201, 75-2-202, 75-2-203, 75-2-204, 75-2-206, 75-2-207, 75-2-211, 75-2-212, 75-2-213, 75-2-215, 75-2-217, 75-2-218, 75-2-219, 75-2-220, 75-2-221, 75-2-231, 75-2-234, 75-2-301, 75-2-302, 75-2-401, 75-2-402, 75-2-411, 75-2-421, 75-2-422, 75-2-425, 75-2-426, 75-2-428, 75-2-515, 75-5-103, 75-5-105, 75-5-106, 75-5-201, 75-5-202, 75-5-203, 75-5-222, 75-5-301, 75-5-302, 75-5-303, 75-5-304, 75-5-305, 75-5-307, 75-5-308, 75-5-310, 75-5-311, 75-5-312, 75-5-313, 75-5-314, 75-5-315, 75-5-316, 75-5-318, 75-5-401, 75-5-402, 75-5-403, 75-5-404, 75-5-502, 75-5-514, 75-5-515, 75-5-516, 75-5-611, 75-5-614, 75-5-621, 75-5-641, 75-5-702, 75-5-802, 75-6-102, 75-6-104, 75-6-105, 75-6-106, 75-6-107, 75-6-108, 75-6-109, 75-6-112, 75-6-113, 75-6-116, 75-6-121, 75-6-131, 75-10-103, 75-10-104, 75-10-112, 75-10-115, 75-10-203, 75-10-206, 75-10-221, 75-10-223, 75-10-224, 75-10-227, 75-10-403, 75-10-406, 75-10-408, 75-10-409, 75-10-413, 75-10-414, 75-10-417, 75-10-418, 75-10-424, 75-10-501, 75-10-515, 75-10-540, 75-10-714, 75-10-727, 75-10-732, 75-10-736, 75-10-1201, 75-10-1221, 75-10-1222, 75-11-203, 75-11-211, 75-11-218, 75-11-219, 75-11-223, 75-11-224, 75-11-503, 75-11-505, 75-11-508, 75-11-509, 75-11-512, 75-11-513, 75-11-516, 75-11-525, 75-20-104, 75-20-105, 75-20-201, 75-20-207, 75-20-208, 75-20-211, 75-20-215, 75-20-216, 75-20-219, 75-20-223, 75-20-301, 75-20-303, 75-20-304, 75-20-401, 75-20-406, 75-20-407, 75-20-410, 75-20-411, 75-20-1001, 75-20-1202, 75-20-1203, 75-20-1205, 75-26-301, 75-26-304, 76-3-622, 76-4-102, 76-4-108, 76-4-126, 76-4-1001, 80-15-102, 80-15-105, 80-15-110, 80-15-201, 82-4-102, 82-4-103, 82-4-112, 82-4-123, 82-4-129, 82-4-130, 82-4-203, 82-4-205, 82-4-206, 82-4-207, 82-4-223, 82-4-226, 82-4-227, 82-4-231, 82-4-232, 82-4-234, 82-4-235, 82-4-239, 82-4-251, 82-4-254, 82-4-303, 82-4-304, 82-4-305, 82-4-309, 82-4-321, 82-4-332, 82-4-335, 82-4-338, 82-4-339, 82-4-342, 82-4-353, 82-4-361, 82-4-362, 82-4-371, 82-4-403, 82-4-406, 82-4-422, 82-4-427, 82-4-437, 82-4-441, 82-4-442, 82-4-445, 82-

1 4-1001, 82-15-102, AND 82-15-120, MCA; AND REPEALING SECTIONS 2-15-3502, 75-2-111, 75-6-103, 75-
2 10-106, 82-4-111, AND 82-4-204, MCA.”

3
4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

5
6 **Section 1.** Section 7-13-4502, MCA, is amended to read:

7 **"7-13-4502. Definitions.** As used in this part, unless the context indicates otherwise, the following
8 definitions apply:

9 (1) "Board of directors" means the board of directors provided for in 7-13-4516 or a joint board of
10 directors provided for in 7-13-4527.

11 ~~(2) "Board of environmental review" means the board of environmental review as provided in 2-15-~~
12 ~~3502-~~

13 ~~(3)(2)~~ (2) "Commissioners" means the board of county commissioners or the governing body of a city-
14 county consolidated government.

15 (3) "Department" means the department of environmental quality provided for in 2-15-3501.

16 (4) "Family residential unit" means a single-family dwelling.

17 (5) "Fee-assessed units" means all real property with improvements, including taxable and tax-
18 exempt property as shown on the property assessment records maintained by the county, and mobile homes
19 and manufactured homes as defined in 15-24-201.

20 (6) "Local water quality district" means an area established with definite boundaries for the purpose of
21 protecting, preserving, and improving the quality of surface water and ground water in the district as authorized
22 by this part."

23
24 **Section 2.** Section 7-13-4513, MCA, is amended to read:

25 **"7-13-4513. Insufficient protest to bar proceedings -- resolution creating district -- power to**
26 **implement local water quality program.** (1) The commissioners may create a local water quality district,
27 establish fees, and appoint a board of directors if the commissioners find that insufficient protests have been
28 made in accordance with 7-13-4511 or if the registered voters who reside in the proposed district have

1 approved a referendum as provided in 7-13-4512.

2 (2) To create a local water quality district, the commissioners shall pass a resolution in accordance
3 with the resolution of intention introduced and passed by the commissioners or in accordance with the terms of
4 the referendum.

5 (3) The commissioners and board of directors may implement a local water quality program after the
6 program is approved by the ~~board of environmental review~~ department pursuant to 75-5-311."

7

8 **Section 3.** Section 7-13-4517, MCA, is amended to read:

9 **"7-13-4517. Powers and duties of board of directors.** The board of directors of a local water quality
10 district, with the approval of the commissioners, may:

11 (1) develop a local water quality program, to be submitted to the ~~board of environmental review~~
12 department, for the protection, preservation, and improvement of the quality of surface water and ground water
13 in the district. In developing the program, the board of directors shall consult with the board or boards of
14 supervisors of conservation districts, established as provided in 76-15-201, whose geographical area of
15 jurisdiction is included within the boundaries of the local water quality district.

16 (2) implement a local water quality program;

17 (3) administer the budget of the local water quality district;

18 (4) employ personnel;

19 (5) purchase, rent, or lease equipment and material necessary to develop and implement an effective
20 program;

21 (6) cooperate or contract with any corporation, association, individual, or group of individuals,
22 including any agency of the federal, state, or local government, in order to develop and implement an effective
23 program;

24 (7) receive gifts, grants, or donations for the purpose of advancing the program and acquire, by gift,
25 deed, or purchase, land necessary to implement the local water quality program;

26 (8) administer local ordinances that are adopted by the commissioners and governing bodies of the
27 participating cities and towns and that pertain to the protection, preservation, and improvement of the quality of
28 surface water and ground water;

(9) apply for and receive from the federal government or the state government, on behalf of the local water quality district, money to aid the local water quality program;

(10) borrow money for assistance in planning or refinancing a local water quality district and repay loans with the money received from the established fees; and

(11) construct facilities that cost not more than \$5,000 and maintain facilities necessary to accomplish the purposes of the district, including but not limited to facilities for removal of water-borne contaminants; water quality improvement; sanitary sewage collection, disposal, and treatment; and storm water or surface water drainage collection, disposal, and treatment."

Section 4. Section 15-24-3001, MCA, is amended to read:

"15-24-3001. Electrical generation and transmission facility exemption -- definitions. (1) (a)

Except as provided in subsections (1)(b) and (3), an electrical generation facility and related delivery facilities constructed in the state of Montana after May 5, 2001, and before January 1, 2006, may be exempt from property taxation for a 10-year period beginning on the date that an owner or operator of an electrical generation facility and related delivery facilities commences to construct the facility as defined in ~~75-20-104(6)(a) and (6)(b)~~ 75-20-104(5)(a) and (5)(b). In order to be exempt from property taxation, an owner and operator of an electrical generation facility and related delivery facilities shall offer contracts to sell 50% of that facility's net generating output at a cost-based rate, which includes a rate of return not to exceed 12%, to customers for a 20-year period from the date of the facility's completion.

(b) The property tax exemption allowed under subsection (1)(a) is limited to a 5-year period for generation facilities powered by oil or gas turbines.

(2) To the extent that 50% of the net generating output of the facility is not contracted for delivery to consumers for a contract term extending 5 years to 20 years from the completion of the facility, as determined by the owner, surplus capacity must be offered on a declining contract term basis for the remainder of the contract period at a cost-based rate that includes a rate of return not to exceed 12%. Surplus capacity that is not contracted for in this fashion may be sold at market rates.

(3) (a) Except as provided in subsection (3)(c), if an owner or operator of property exempt from taxation under subsection (1)(a) signs a contract to sell power as required in subsection (1) and then fails to

perform the contract during the first 10-year period, the 10-year property tax exemption in subsection (1) is void and the property is subject to a rollback tax as provided in 15-24-3002.

(b) Except as provided in subsection (3)(c), if an owner or operator of property exempt from taxation under subsection (1)(b) signs a contract to sell power as required in subsection (1) and then fails to perform the contract during the first 5-year period, the 5-year property tax exemption in subsection (1) is void and the property is subject to a rollback tax as provided in 15-24-3002.

(c) If an owner or operator fails to perform the contract due to earthquakes or other acts of God, theft, sabotage, acts of war, other social instabilities, or equipment failure, the property tax exemption in subsection (1)(a) or (1)(b) is not void and the owner or operator is not subject to the rollback tax as provided in 15-24-3002.

(4) For the purposes of this section, the following definitions apply:

(a) (i) "Electrical generation facility" means any combination of a physically connected generator or generators, associated prime movers, and other associated property, including appurtenant land and improvements and personal property, that are normally operated together to produce 20 average megawatts or more of electric power. The term is limited to generating facilities that produce electricity from coal-fired steam turbines, oil or gas turbines, or turbine generators that are driven by falling water.

(ii) The term does not include:

(A) electrical generation facilities used for noncommercial purposes or exclusively for agricultural purposes; or

(B) a qualifying small power production facility, as that term is defined in 16 U.S.C. 796(17), that is owned and operated by a person not primarily engaged in the generation or sale of electricity other than electric power from a small power production facility and that is classified under 15-6-134 and 15-6-138.

(b) "Related delivery facilities" means transmission facilities necessary to deliver the energy from the electrical generation facility to the existing network transmission system.

(c) "Surplus capacity" means that portion of the 50% of net generating output not contracted for use.

(5) The department shall appraise exempt electrical generation facilities for each year that the property is exempt and determine the taxable value of the property as if it were subject to property taxation."

Section 5. Section 37-42-102, MCA, is amended to read:

1 **"37-42-102. Definitions.** Unless the context requires otherwise, in this chapter, the following
2 definitions apply:

3
4 ~~(1)~~ ~~"Board" means the board of environmental review provided for in 2-15-3502.~~

5 ~~(2)~~(1) "Certificate" means a certificate of competency issued by the department, stating that the
6 operator holding the certificate has met the requirements for the specified operator classification of the
7 certification program.

8 ~~(3)~~(2) "Community water system" means a public water supply system that serves at least 15 service
9 connections used by year-round residents or that regularly serves at least 25 year-round residents.

10 ~~(4)~~(3) "Council" means the water and wastewater operators' advisory council provided for in 2-15-
11 2105.

12 ~~(5)~~(4) "Department" means the department of environmental quality provided for in 2-15-3501.

13 ~~(6)~~(5) "Industrial waste" means any waste substance from the processes of business or industry or
14 from the development of a natural resource, together with any sewage that may be present.

15 ~~(7)~~(6) "Industrial waste discharge system" means a system that discharges industrial waste into state
16 waters.

17 ~~(8)~~(7) "Nontransient noncommunity water system" means a public water system, as defined in 75-6-
18 202, that is not a community system and that regularly serves at least 25 of the same persons for at least 6
19 months a year.

20 ~~(9)~~(8) "Operator" means the person in direct responsible charge of the operation of a water treatment
21 plant, water distribution system, or wastewater treatment plant.

22 ~~(10)~~(9) "State waters" means the term as defined in 75-6-102.

23 ~~(11)~~(10) "Wastewater treatment plant" means a facility that:

24 (a) is designed to remove solids, bacteria, or other harmful constituents of sewage, industrial waste,
25 or other wastes; and

26 (b) is part of either an industrial waste discharge system or a public sewage system as defined in 75-
27 6-102.

28 ~~(12)~~(11) "Water distribution system" means that portion of the water supply system that conveys water

1 from the water treatment plant or other supply source to the premises of the consumer and that is part of a
2 community water system or a nontransient noncommunity water system.

3 ~~(13)~~(12) "Water supply system" means a system of pipes, structures, and facilities through which water
4 is obtained, treated, sold, distributed, or otherwise offered to the public for household use or use by humans
5 and that is part of a community water system or a nontransient noncommunity water system.

6 ~~(14)~~(13) "Water treatment plant" means that portion of the water supply system that alters either the
7 physical, chemical, or bacteriological quality of the water and renders it safe and palatable for human use."
8

9 **Section 6.** Section 37-42-321, MCA, is amended to read:

10 **"37-42-321. Revocation of operator's certificate -- disciplinary action by department.** (1) The
11 department may issue an order revoking the certificate of an operator when the department finds that:

12 (a) the operator has practiced fraud or deception;

13 (b) reasonable care, judgment, or the application of the operator's knowledge or ability was not used
14 in the performance of the operator's duties; or

15 (c) the operator is incompetent or unable to properly perform the operator's duties.

16 (2) The department may issue an order taking any disciplinary action listed in 37-1-136.

17 (3) A person aggrieved by an order of the department under this section may request a hearing
18 before the ~~board~~department by submitting a written request stating the reason for the request within 30 days
19 after receipt of the department's decision.

20 (4) The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4,
21 part 6, apply to a hearing held under this section."
22

23 **Section 7.** Section 50-2-116, MCA, is amended to read:

24 **"50-2-116. Powers and duties of local boards of health.** (1) In order to carry out the purposes of
25 the public health system, in collaboration with federal, state, and local partners, each local board of health shall:

26 (a) appoint and fix the salary of a local health officer who is:

27 (i) a physician;

28 (ii) a person with a master's degree in public health; or

- 1 (iii) a person with equivalent education and experience, as determined by the department;
- 2 (b) elect a presiding officer and other necessary officers;
- 3 (c) employ qualified staff;
- 4 (d) adopt bylaws to govern meetings;
- 5 (e) hold regular meetings at least quarterly and hold special meetings as necessary;
- 6 (f) identify, assess, prevent, and ameliorate conditions of public health importance through:
- 7 (i) epidemiological tracking and investigation;
- 8 (ii) screening and testing;
- 9 (iii) isolation and quarantine measures;
- 10 (iv) diagnosis, treatment, and case management;
- 11 (v) abatement of public health nuisances;
- 12 (vi) inspections;
- 13 (vii) collecting and maintaining health information;
- 14 (viii) education and training of health professionals; or
- 15 (ix) other public health measures as allowed by law;
- 16 (g) protect the public from the introduction and spread of communicable disease or other conditions of
- 17 public health importance, including through actions to ensure the removal of filth or other contaminants that
- 18 might cause disease or adversely affect public health;
- 19 (h) supervise or make inspections for conditions of public health importance and issue written orders
- 20 for compliance or for correction, destruction, or removal of the conditions;
- 21 (i) bring and pursue actions and issue orders necessary to abate, restrain, or prosecute the violation
- 22 of public health laws, rules, and local regulations;
- 23 (j) identify to the department an administrative liaison for public health. The liaison must be the local
- 24 health officer in jurisdictions that employ a full-time local health officer. In jurisdictions that do not employ a full-
- 25 time local health officer, the liaison must be the highest ranking public health professional employed by the
- 26 jurisdiction.
- 27 (k) subject to the provisions of 50-2-130, adopt necessary regulations that are not less stringent than
- 28 state standards for the control and disposal of sewage from private and public buildings and facilities that are

not regulated by Title 75, chapter 6, or Title 76, chapter 4. The regulations must describe standards for granting variances from the minimum requirements that are identical to standards promulgated by the ~~board of environmental review~~ department of environmental quality and must provide for appeal of variance decisions to the department of environmental quality as required by 75-5-305. If the local board of health regulates or permits water well drilling, the regulations must prohibit the drilling of a well if the well isolation zone, as defined in 76-4-102, encroaches onto adjacent private property without the authorization of the private property owner.

(2) Local boards of health may:

(a) accept and spend funds received from a federal agency, the state, a school district, or other persons or entities;

(b) adopt necessary fees to administer regulations for the control and disposal of sewage from private and public buildings and facilities;

(c) adopt regulations that do not conflict with 50-50-126 or rules adopted by the department:

(i) for the control of communicable diseases;

(ii) for the removal of filth that might cause disease or adversely affect public health;

(iii) subject to the provisions of 50-2-130, for sanitation in public and private buildings and facilities that affects public health and for the maintenance of sewage treatment systems that do not discharge effluent directly into state water and that are not required to have an operating permit as required by rules adopted under 75-5-401;

(iv) subject to the provisions of 50-2-130 and Title 50, chapter 48, for tattooing and body-piercing establishments and that are not less stringent than state standards for tattooing and body-piercing establishments;

(v) for the establishment of institutional controls that have been selected or approved by the:

(A) United States environmental protection agency as part of a remedy for a facility under the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9601, et seq.; or

(B) department of environmental quality as part of a remedy for a facility under the Montana Comprehensive Environmental Cleanup and Responsibility Act, Title 75, chapter 10, part 7; and

(vi) to implement the public health laws; and

(d) promote cooperation and formal collaborative agreements between the local board of health and

1 tribes, tribal organizations, and the Indian health service regarding public health planning, priority setting,
2 information and data sharing, reporting, resource allocation, service delivery, jurisdiction, and other matters
3 addressed in this title.

4 (3) A local board of health may provide, implement, facilitate, or encourage other public health
5 services and functions as considered reasonable and necessary."
6

7 **Section 8.** Section 50-79-401, MCA, is amended to read:

8 **"50-79-401. Administrative hearings.** In a proceeding under this chapter for granting, suspending,
9 revoking, or amending a license or for determining compliance with or granting exceptions from rules adopted
10 under this chapter, the ~~board of environmental review~~ department shall first afford an opportunity for a hearing
11 on the record upon the request of a person whose interest may be affected by the proceeding and shall admit
12 the person as a party to the proceeding."
13

14 **Section 9.** Section 50-79-403, MCA, is amended to read:

15 **"50-79-403. Emergency orders and rules.** When the department finds that an emergency exists
16 requiring immediate action to protect the public health and safety, the department may, without notice or
17 hearing, issue a rule or order reciting the existence of the emergency and requiring that such action be taken as
18 considered necessary to meet the emergency. Notwithstanding any provision of this chapter to the contrary, the
19 rule or order is effective immediately. A person to whom the rule or order is directed shall comply with it
20 immediately but on application to the ~~board~~ department ~~shall~~ must be afforded a prompt hearing. On the basis
21 of the hearing the emergency rule or order ~~shall~~ must be continued, modified, or revoked by the ~~board~~
22 department within 30 days after the hearing or when the emergency no longer exists."
23

24 **Section 10.** Section 75-1-220, MCA, is amended to read:

25 **"75-1-220. Definitions.** For the purposes of this part, the following definitions apply:

26 (1) "Alternatives analysis" means an evaluation of different parameters, mitigation measures, or
27 control measures that would accomplish the same objectives as those included in the proposed action by the
28 applicant. For a project that is not a state-sponsored project, it does not include an alternative facility or an

alternative to the proposed project itself. The term includes alternatives required pursuant to Title 75, chapter 20.

(2) "Appropriate board" means, for administrative actions taken under this part by the:

~~(a) department of environmental quality, the board of environmental review, as provided for in 2-15-3502;~~

~~(b)(a)~~ department of fish, wildlife, and parks, the fish and wildlife commission, as provided for in 2-15-3402, and the state parks and recreation board, as provided for in 2-15-3406;

~~(c)(b)~~ department of transportation, the transportation commission, as provided for in 2-15-2502;

~~(d)(c)~~ department of natural resources and conservation for state trust land issues, the board of land commissioners, as provided for in Article X, section 4, of the Montana constitution;

~~(e)(d)~~ department of natural resources and conservation for oil and gas issues, the board of oil and gas conservation, as provided for in 2-15-3303; and

~~(f)(e)~~ department of livestock, the board of livestock, as provided for in 2-15-3102.

(3) "Complete application" means, for the purpose of complying with this part, an application for a permit, license, or other authorization that contains all data, studies, plans, information, forms, fees, and signatures required to be included with the application sufficient for the agency to approve the application under the applicable statutes and rules.

(4) "Cumulative impacts" means the collective impacts on the human environment within the borders of Montana of the proposed action when considered in conjunction with other past, present, and future actions related to the proposed action by location or generic type.

(5) "Environmental review" means any environmental assessment, environmental impact statement, or other written analysis required under this part by a state agency of a proposed action to determine, examine, or document the effects and impacts of the proposed action on the quality of the human and physical environment within the borders of Montana as required under this part.

(6) "Project sponsor" means any applicant, owner, operator, agency, or other entity that is proposing an action that requires an environmental review. If the action involves state agency-initiated actions on state trust lands, the term also includes each institutional beneficiary of any trust as described in The Enabling Act of Congress, approved February 22, 1899, 25 Stat. 676, as amended, the Morrill Act of 1862, 7 U.S.C. 301

1 through 308, and the Morrill Act of 1890, 7 U.S.C. 321 through 329.

2 (7) "Public scoping process" means any process to determine the scope of an environmental review.

3 (8) (a) "State-sponsored project" means:

4 (i) a project, program, or activity initiated and directly undertaken by a state agency;

5 (ii) except as provided in subsection (8)(b)(i), a project or activity supported through a contract, grant,
6 subsidy, loan, or other form of funding assistance from a state agency, either singly or in combination with one
7 or more other state agencies; or

8 (iii) except as provided in subsection (8)(b)(i), a project or activity authorized by a state agency acting
9 in a land management capacity for a lease, easement, license, or other authorization to act.

10 (b) The term does not include:

11 (i) a project or activity undertaken by a private entity that is made possible by the issuance of permits,
12 licenses, leases, easements, grants, loans, or other authorizations to act by the:

13 (A) department of environmental quality pursuant to Titles 75, 76, or 82;

14 (B) department of fish, wildlife, and parks pursuant to Title 87, chapter 4, part 4;

15 (C) board of oil and gas conservation pursuant to Title 82, chapter 11; or

16 (D) department of natural resources and conservation or the board of land commissioners pursuant to
17 Titles 76, 77, 82, and 85; or

18 (ii) a project or activity involving the issuance of a permit, license, certificate, or other entitlement for
19 permission to act by another agency acting in a regulatory capacity, either singly or in combination with other
20 state agencies."

21

22 **Section 11.** Section 75-1-1001, MCA, is amended to read:

23 **"75-1-1001. Penalty factors.** (1) In determining the amount of an administrative or civil penalty to
24 which subsection (4) applies, the department of environmental quality or the district court, as appropriate, shall
25 take into account the following factors:

26 (a) the nature, extent, and gravity of the violation;

27 (b) the circumstances of the violation;

28 (c) the violator's prior history of any violation, which:

- (i) must be a violation of a requirement under the authority of the same chapter and part as the violation for which the penalty is being assessed;
- (ii) must be documented in an administrative order or a judicial order or judgment issued within 3 years prior to the date of the occurrence of the violation for which the penalty is being assessed; and
- (iii) may not, at the time that the penalty is being assessed, be undergoing or subject to administrative appeal or judicial review;
- (d) the economic benefit or savings resulting from the violator's action;
- (e) the violator's good faith and cooperation;
- (f) the amounts voluntarily expended by the violator, beyond what is required by law or order, to address or mitigate the violation or impacts of the violation; and
- (g) other matters that justice may require.
- (2) After the amount of a penalty is determined under subsection (1), the department of environmental quality or the district court, as appropriate, may consider the violator's financial ability to pay the penalty and may institute a payment schedule or suspend all or a portion of the penalty.
- (3) The department of environmental quality may accept a supplemental environmental project as mitigation for a portion of the penalty. For purposes of this section, a "supplemental environmental project" is an environmentally beneficial project that a violator agrees to undertake in settlement of an enforcement action but which the violator is not otherwise legally required to perform.
- (4) This section applies to penalties assessed by the department of environmental quality or the district court under Title 75, chapters 2, 5, 6, 8, 11, and 20; Title 75, chapter 10, parts 2, 4, 5, and 12; and Title 76, chapter 4.
- (5) ~~The board of environmental review and the department of environmental quality may, for the statutes listed in subsection (4) for which each has rulemaking authority, adopt rules to implement this section."~~

Section 12. Section 75-2-103, MCA, is amended to read:

"75-2-103. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

- (1) "Air contaminant" means dust, fumes, mist, smoke, other particulate matter, vapor, gas, odorous

1 substances, or any combination of those air contaminants.

2 (2) "Air pollutants" means one or more air contaminants that are present in the outdoor atmosphere,
3 including those pollutants regulated pursuant to section 7412 and Subchapter V of the federal Clean Air Act, 42
4 U.S.C. 7401, et seq.

5 (3) "Air pollution" means the presence of air pollutants in a quantity and for a duration that are or tend
6 to be injurious to human health or welfare, animal or plant life, or property or that would unreasonably interfere
7 with the enjoyment of life, property, or the conduct of business.

8 (4) "Associated supporting infrastructure" means:

9 (a) electric transmission and distribution facilities;

10 (b) pipeline facilities;

11 (c) aboveground ponds and reservoirs and underground storage reservoirs;

12 (d) rail transportation;

13 (e) aqueducts and diversion dams;

14 (f) devices or equipment associated with the delivery of an energy form or product produced at an
15 energy development project; or

16 (g) other supporting infrastructure, as defined by ~~board~~ department rule, that is necessary for an
17 energy development project.

18 ~~(5) "Board" means the board of environmental review provided for in 2-15-3502.~~

19 ~~(6)~~(5) (a) "Commercial hazardous waste incinerator" means:

20 (i) an incinerator that burns hazardous waste; or

21 (ii) a boiler or industrial furnace subject to the provisions of 75-10-406.

22 (b) Commercial hazardous waste incinerator does not include a research and development facility
23 that receives federal or state research funds and that burns hazardous waste primarily to test and evaluate
24 waste treatment remediation technologies.

25 ~~(7)~~(6) "Department" means the department of environmental quality provided for in 2-15-3501.

26 ~~(8)~~(7) "Emission" means a release into the outdoor atmosphere of air contaminants.

27 ~~(9)~~(8) (a) "Energy development project" means each plant, unit, or other development and associated
28 developments, including any associated supporting infrastructure, designed for or capable of:

- 1 (i) generating electricity;
- 2 (ii) producing gas derived from coal;
- 3 (iii) producing liquid hydrocarbon products;
- 4 (iv) refining crude oil or natural gas;
- 5 (v) producing alcohol to be blended for ethanol-blended gasoline and that are eligible for a tax
- 6 incentive pursuant to Title 15, chapter 70, part 5;
- 7 (vi) producing biodiesel and that are eligible for a tax incentive for the production of biodiesel pursuant
- 8 to 15-32-701; or
- 9 (vii) transmitting electricity through an electric transmission line with a design capacity of equal to or
- 10 greater than 50 kilovolts.

11 (b) The term does not include a nuclear facility as defined in 75-20-1202.

12 ~~(10)~~(9) "Environmental protection law" means a law contained in or an administrative rule adopted

13 pursuant to Title 75, chapter 2, 5, 10, or 11.

14 ~~(11)~~(10) "Hazardous waste" means:

15 (a) a substance defined as hazardous under 75-10-403 or defined as hazardous in department

16 administrative rules adopted pursuant to Title 75, chapter 10, part 4; or

17 (b) a waste containing 2 parts or more per million of polychlorinated biphenyl (PCB).

18 ~~(12)~~(11) (a) "Incinerator" means any single- or multiple-chambered combustion device that burns

19 combustible material, alone or with a supplemental fuel or with catalytic combustion assistance, primarily for the

20 purpose of removal, destruction, disposal, or volume reduction of any portion of the input material.

21 (b) Incinerator does not include:

22 (i) safety flares used to combust or dispose of hazardous or toxic gases at industrial facilities, such as

23 refineries, gas sweetening plants, oil and gas wells, sulfur recovery plants, or elemental phosphorus plants;

24 (ii) space heaters that burn used oil;

25 (iii) wood-fired boilers; or

26 (iv) wood waste burners, such as tepee, wigwam, truncated cone, or silo burners.

27 ~~(13)~~(12) "Medical waste" means any waste that is generated in the diagnosis, treatment, or

28 immunization of human beings or animals, in medical research on humans or animals, or in the production or

1 testing of biologicals. The term includes:

2 (a) cultures and stocks of infectious agents;

3 (b) human pathological wastes;

4 (c) waste human blood or products of human blood;

5 (d) sharps;

6 (e) contaminated animal carcasses, body parts, and bedding that were known to have been exposed
7 to infectious agents during research;

8 (f) laboratory wastes and wastes from autopsy or surgery that were in contact with infectious agents;

9 and

10 (g) biological waste and discarded material contaminated with blood, excretion, exudates, or
11 secretions from humans or animals.

12 ~~(14)~~(13) (a) "Oil or gas well facility" means a well that produces oil or natural gas. The term includes:

13 (i) equipment associated with the well and used for the purpose of producing, treating, separating, or
14 storing oil, natural gas, or other liquids produced by the well; and

15 (ii) a group of wells under common ownership or control that produce oil or natural gas and that share
16 common equipment used for the purpose of producing, treating, separating, or storing oil, natural gas, or other
17 liquids produced by the wells.

18 (b) The equipment referred to in subsection ~~(14)(a)~~ ~~(13)(a)~~ includes but is not limited to wellhead
19 assemblies, amine units, prime mover engines, phase separators, heater treater units, dehydrator units, tanks,
20 and connecting tubing.

21 (c) The term does not include equipment such as compressor engines used for transmission of oil or
22 natural gas.

23 ~~(15)~~(14) "Person" means an individual, a partnership, a firm, an association, a municipality, a public or
24 private corporation, the state or a subdivision or agency of the state, a trust, an estate, an interstate body, the
25 federal government or an agency of the federal government, or any other legal entity and includes persons
26 resident in Canada.

27 ~~(16)~~(15) "Principal" means a principal of a corporation, including but not limited to a partner, associate,
28 officer, parent corporation, or subsidiary corporation.

1 ~~(17)~~(16) "Small business stationary source" means a stationary source that:

2 (a) is owned or operated by a person who employs 100 or fewer individuals;

3 (b) is a small business concern as defined in the Small Business Act, 15 U.S.C. 631, et seq.;

4 (c) is not a major stationary source as defined in Subchapter V of the federal Clean Air Act, 42 U.S.C.
5 7661, et seq.;

6 (d) emits less than 50 tons per year of an air pollutant;

7 (e) emits less than a total of 75 tons per year of all air pollutants combined; and

8 (f) is not excluded from this definition under 75-2-108(3).

9 ~~(18)~~(17) (a) "Solid waste" means all putrescible and nonputrescible solid, semisolid, liquid, or
10 gaseous wastes, including but not limited to garbage; rubbish; refuse; ashes; swill; food wastes; commercial or
11 industrial wastes; medical waste; sludge from sewage treatment plants, water supply treatment plants, or air
12 pollution control facilities; construction, demolition, or salvage wastes; dead animals, dead animal parts, offal,
13 animal droppings, or litter; discarded home and industrial appliances; automobile bodies, tires, interiors, or parts
14 thereof; wood products or wood byproducts and inert materials; styrofoam and other plastics; rubber materials;
15 asphalt shingles; tarpaper; electrical equipment, transformers, or insulated wire; oil or petroleum products or oil
16 or petroleum products and inert materials; treated lumber and timbers; and pathogenic or infectious waste.

17 (b) Solid waste does not include municipal sewage, industrial wastewater effluents, mining wastes
18 regulated under the mining and reclamation laws administered by the department of environmental quality, or
19 slash and forest debris regulated under laws administered by the department of natural resources and
20 conservation."

21
22 **Section 13.** Section 75-2-104, MCA, is amended to read:

23 **"75-2-104. Limitations -- personal cause of action unabridged -- venue.** (1) This chapter may not
24 be construed to:

25 (a) grant to the ~~board~~department any jurisdiction or authority with respect to air contamination
26 existing solely within commercial and industrial plants, works, or shops;

27 (b) affect the relations between employers and employees with respect to or arising out of any
28 condition of air contamination or air pollution;

(c) supersede or limit the applicability of any law or ordinance relating to sanitation, industrial health, or safety; or

(d) abridge, limit, impair, create, enlarge, or otherwise affect substantively or procedurally the right of a person to damages or other relief on account of injury to persons or property and to maintain an action or other appropriate proceeding.

(2) A judicial challenge to a permit issued pursuant to this chapter by a party other than the permit applicant or permitholder must include the party to whom the permit was issued unless otherwise agreed to by the permit applicant or permitholder. All judicial challenges of permits for projects with a project cost, as determined by the court, of more than \$1 million must have precedence over any civil cause of a different nature pending in that court. If the court determines that the challenge was without merit or was for an improper purpose, such as to harass, to cause unnecessary delay, or to impose needless or increased cost in litigation, the court may award attorney fees and costs incurred in defending the action.

(3) An action to challenge a permit decision pursuant to this chapter must be brought in the county in which the permitted activity will occur. If an activity will occur in more than one county, the action may be brought in any of the counties in which the activity will occur.

(4) A judicial action or proceeding pursuant to this chapter for an equine slaughter or processing facility must comply with 81-9-240 and 81-9-241."

Section 14. Section 75-2-105, MCA, is amended to read:

"75-2-105. Confidentiality of records. (1) Records or other information concerning air pollutant sources that are furnished to or obtained by the ~~board or~~ department are a matter of public record and open to public use. However, any information unique to the owner or operator of an air pollutant source that would, if disclosed, reveal methods or processes entitled to protection as trade secrets must be maintained as confidential if so determined by a court of competent jurisdiction. The owner or operator shall file a declaratory judgment action to establish the existence of a trade secret if the owner or operator wishes the information to enjoy confidential status. The department must be served in the action and may intervene as a party in the action. A trade secret not intended to be public when submitted to the ~~board or~~ department must be submitted in writing and clearly marked as confidential. However, emission data and operating permits issued by the

department pursuant to 75-2-217 through 75-2-219 may not be considered confidential for the purposes of this section.

(2) This section does not prevent the use of records or information by the ~~board or~~ department in compiling or publishing analyses or summaries relating to the general condition of the outdoor atmosphere if the analyses or summaries do not identify an owner or operator or reveal information otherwise made confidential by this section."

Section 15. Section 75-2-112, MCA, is amended to read:

"75-2-112. Powers and responsibilities of department. (1) The department is responsible for the administration of this chapter.

(2) Subject to the provisions of 75-2-207, the department shall:

(a) adopt, amend, and repeal rules for the administration, implementation, and enforcement of this chapter, for issuing orders under and in accordance with 42 U.S.C. 7419, and for fulfilling the requirements of 42 U.S.C. 7420 and regulations adopted pursuant to that section, except that, for purposes other than agricultural open burning, the department may not adopt permitting requirements or any other rule relating to:

(i) any agricultural activity or equipment that is associated with the use of agricultural land or the planting, production, processing, harvesting, or storage of agricultural crops by an agricultural producer and that is not subject to the requirements of 42 U.S.C. 7475, 7503, or 7661a;

(ii) a commercial operation relating to the activities or equipment referred to in subsection (2)(a)(i) that remains in a single location for less than 12 months and is not subject to the requirements of 42 U.S.C. 7475, 7503, or 7661a; or

(iii) forestry equipment and its associated engine used for forestry practices that remain in a single location for less than 12 months and are not subject to the requirements of 42 U.S.C. 7475, 7503, or 7661a;

(b) hold hearings relating to any aspect of or matter in the administration of this chapter at a place designated by the department. The department may compel the attendance of witnesses and the production of evidence at hearings. The department shall designate an attorney to assist in conducting hearings and shall appoint a reporter who must be present at all hearings and take full stenographic notes of all proceedings, transcripts of which will be available to the public at cost.

1 (c) issue orders necessary to effectuate the purposes of this chapter;

2 (d) by rule require access to records relating to emissions;

3 (e) by rule adopt a schedule of fees required for permits, permit applications, and registrations
4 consistent with this chapter;

5 (f) have the power to issue orders under and in accordance with 42 U.S.C. 7419.

6 ~~(2)~~(3) The department shall:

7 (a) by appropriate administrative and judicial proceedings, enforce orders issued by the department or
8 the former board of environmental review;

9 (b) secure necessary scientific, technical, administrative, and operational services, including
10 laboratory facilities, by contract or otherwise;

11 (c) prepare and develop a comprehensive plan for the prevention, abatement, and control of air
12 pollution in this state;

13 (d) encourage voluntary cooperation by persons and affected groups to achieve the purposes of this
14 chapter;

15 (e) encourage local units of government to handle air pollution problems within their respective
16 jurisdictions on a cooperative basis and provide technical and consultative assistance for this. If local programs
17 are financed with public funds, the department may contract with the local government to share the cost of the
18 program. However, the state share may not exceed 30% of the total cost.

19 (f) encourage and conduct studies, investigations, and research relating to air contamination and air
20 pollution and their causes, effects, prevention, abatement, and control;

21 (g) determine, by means of field studies and sampling, the degree of air contamination and air
22 pollution in the state;

23 (h) make a continuing study of the effects of the emission of air contaminants from motor vehicles on
24 the quality of the outdoor atmosphere of this state and make recommendations to appropriate public and
25 private bodies with respect to this;

26 (i) collect and disseminate information and conduct educational and training programs relating to air
27 contamination and air pollution;

28 (j) advise, consult, contract, and cooperate with other agencies of the state, local governments,

1 industries, other states, interstate and interlocal agencies, the United States, and any interested persons or
2 groups;

3 (k) consult, on request, with any person proposing to construct, install, or otherwise acquire an air
4 contaminant source or device or system for the control thereof concerning the efficacy of this device or system
5 or the air pollution problems which may be related to the source, device, or system. Nothing in this consultation
6 relieves a person from compliance with this chapter, rules in force under it, or any other provision of law.

7 (l) accept, receive, and administer grants or other funds or gifts from public or private agencies,
8 including the United States, for the purpose of carrying out this chapter. Funds received under this section shall
9 be deposited in the state treasury to the account of the department.

10 ~~(3)(4)~~ The department may assess fees to the applicant for the analysis of the environmental impact
11 of an application to redesignate the classification of any area, except those areas within the exterior boundaries
12 of a reservation of a federally recognized Indian tribe, under the classifications established by 42 U.S.C. 7470
13 through 7479 (prevention of significant deterioration of air quality). The determination of whether or not a fee
14 will be assessed is to be on a case-by-case basis."
15

16 **Section 16.** Section 75-2-201, MCA, is amended to read:

17 **"75-2-201. Classifying and reporting air contaminant sources.** (1) The ~~board~~department may
18 classify air contaminant sources ~~which that~~ in its judgment may cause or contribute to air pollution according to
19 levels and types of emissions and other characteristics ~~which that~~ relate to air pollution and may require
20 reporting for any such class or classes. ~~Such~~The classifications ~~shall~~must be made with special reference to
21 effects on health, economic and social factors, and physical effects on property and may be applied to the state
22 as a whole or to any designated area.

23 (2) Any person operating or responsible for the operation of air contaminant sources of any class for
24 which the rules of the ~~board~~department may require reporting shall make reports containing ~~such any~~
25 information as may be required concerning location, size and height of contaminant outlets, processes
26 employed, fuels used, and the nature and time periods or duration of emissions and any other matter relevant
27 to air pollution ~~which that~~ is available or reasonably capable of being assembled."
28

Section 17. Section 75-2-202, MCA, is amended to read:

"75-2-202. ~~Board~~Department to set ambient air quality standards. (1) The ~~board~~department shall establish ambient air quality standards for the state.

(2) Ambient air quality standards for fluorides shall be established through limitations upon the concentration of fluorides in forage grasses, hay, and silage."

Section 18. Section 75-2-203, MCA, is amended to read:

"75-2-203. ~~Board~~Department to set emission levels. (1) The ~~board~~department may establish the limitations of the levels, concentrations, or quantities of emissions of various pollutants from any source necessary to prevent, abate, or control air pollution. Except as otherwise provided in or pursuant to this section, ~~such those~~ levels, concentrations, or quantities ~~shall be~~are controlling, and no emission in excess ~~thereof shall be of those levels~~ is lawful.

(2) In any area where the concentration of air pollution sources or of population or where the nature of the economy or of land and its uses ~~so may~~ require, the ~~board~~department may fix more stringent requirements governing the emission of air pollutants than those in effect pursuant to subsection (1) ~~of this section~~.

(3) The ~~board~~department may by rule use any widely recognized measuring system for measuring emission of air contaminants.

(4) Should federal minimum standards of air pollution be set by federal law, the ~~board~~department may, if necessary in some localities of this state, set more stringent standards by rule."

Section 19. Section 75-2-204, MCA, is amended to read:

"75-2-204. Rules relating to construction, installation, alteration, operation, or use. The ~~board~~department may by rule prohibit the construction, installation, alteration, operation, or use of a machine, equipment, device, or facility that it finds may directly or indirectly cause or contribute to air pollution or that is intended primarily to prevent or control the emission of air pollutants, unless the owner or operator has obtained a permit under this part or has registered the source of air contaminants with the department if the source is in a category for which only registration is required by the rules adopted to implement this part."

1 **Section 20.** Section 75-2-206, MCA, is amended to read:

2 **"75-2-206. Study of effects of sulfur dioxide on health and environment.** (1) To the extent that
3 funds are available, the ~~board~~department shall conduct an ongoing study in areas of Montana where there are
4 major industrial sources of sulfur dioxide. The study shall concentrate on the effects on human health and the
5 environment of ambient sulfur dioxide concentrations separately and in conjunction with particulates.

6 (2) Notwithstanding other funding sources to pay for the study, the ~~board~~department may accept
7 funds and grants from private and public sources."
8

9 **Section 21.** Section 75-2-207, MCA, is amended to read:

10 **"75-2-207. State regulations no more stringent than federal regulations or guidelines --**
11 **exceptions -- procedure.** (1) After April 14, 1995, except as provided in subsections (2) and (3) or unless
12 required by state law, the ~~board or~~ department may not adopt a rule to implement this chapter that is more
13 stringent than the comparable federal regulations or guidelines that address the same circumstances. The
14 ~~board or~~ department may incorporate by reference comparable federal regulations or guidelines.

15 (2) (a) The ~~board or~~ department may adopt a rule to implement this chapter that is more stringent
16 than comparable federal regulations or guidelines only if:

17 (i) a public hearing is held;

18 (ii) public comment is allowed; and

19 (iii) the ~~board or the~~ department makes a written finding after the public hearing and comment period
20 that is based on evidence in the record that the proposed standard or requirement:

21 (A) protects public health or the environment;

22 (B) can mitigate harm to the public health or the environment; and

23 (C) is achievable with current technology.

24 (b) The written finding required under subsection (2)(a)(iii) must reference information and peer-
25 reviewed scientific studies contained in the record that form the basis for ~~the board's or the~~ department's
26 conclusion. The written finding must also include information from the hearing record regarding costs to the
27 regulated community that are directly attributable to the proposed standard or requirement.

28 (c) (i) A person or entity affected by a rule of the ~~board or~~ department adopted after January 1, 1990,

1 and before April 14, 1995, that the person or entity believes is more stringent than comparable federal
2 regulations or guidelines may petition the ~~board or~~ department to review the rule.

3 (ii) If the ~~board or~~ department determines that the rule is more stringent than comparable federal
4 regulations or guidelines, the ~~board or~~ department shall either revise the rule to conform to the federal
5 regulations or guidelines or follow the process provided in subsections (2)(a) and (2)(b) within a reasonable
6 period of time, not to exceed 6 months after receiving the petition.

7 (iii) A petition under this section does not relieve the petitioner of the duty to comply with the
8 challenged rule. The ~~board or~~ department may charge a petition filing fee in an amount not to exceed \$250.

9 (iv) A person may also petition the ~~board or~~ department for a rule review under subsection (2)(a) if the
10 ~~board or~~ department adopts a rule after January 1, 1990, in an area in which no federal regulations or
11 guidelines existed and the federal government subsequently establishes comparable regulations or guidelines
12 that are less stringent than the previously adopted ~~board or~~ department rule.

13 (3) This section does not apply to a rule adopted under the emergency rulemaking provisions of 2-4-
14 303(1)."

15
16 **Section 22.** Section 75-2-211, MCA, is amended to read:

17 **"75-2-211. Permits for construction, installation, alteration, or use.** (1) The ~~board~~ department
18 shall by rule provide for the issuance, modification, suspension, revocation, and renewal of a permit issued
19 under this part.

20 (2) (a) Except as provided in 75-1-208(4)(b), 75-2-234, and subsections (2)(b) and (2)(c) of this
21 section, not later than 180 days before construction, installation, or alteration begins or as a condition of use of
22 any machine, equipment, device, or facility that the ~~board~~ department finds may directly or indirectly cause or
23 contribute to air pollution or that is intended primarily to prevent or control the emission of air pollutants, the
24 owner or operator shall file with the department the appropriate permit application on forms available from the
25 department.

26 (b) Except as provided in subsection (2)(e), the owner or operator of an oil or gas well facility shall file
27 the permit application with the department no later than January 3, 2006, or 60 days after the initial well
28 completion date, whichever is later. For purposes of this section, the initial well completion date for an oil or gas

1 well facility is:

2 (i) for an oil or gas well facility producing oil, the date when the first oil is produced through wellhead
3 equipment into lease tanks from the ultimate producing interval after casing has been run; and

4 (ii) for an oil or gas well facility producing gas, the date when the oil or gas well facility is capable of
5 producing gas through wellhead equipment from the ultimate producing interval after casing has been run.

6 (c) An owner or operator who complies with subsection (2)(b) may construct, install, or use equipment
7 necessary to complete or operate an oil or gas well facility without a permit until the department's decision on
8 the application is final. If the owner or operator does not comply with subsection (2)(b), the owner or operator
9 may not operate the oil or gas well facility and is liable for a violation of this section for every day of
10 construction, installation, or operation of the facility.

11 (d) The ~~board~~department shall adopt rules establishing air emission control requirements applicable
12 to an oil or gas well facility during the time from the initial well completion date until the department's decision
13 on the application is final.

14 (e) The provisions of subsections (2)(b) and (2)(c) do not apply to an oil or gas well facility subject to
15 the federal air permitting provisions of 42 U.S.C. 7475 or 7503.

16 (3) The permit program administered by the department pursuant to this section must include the
17 following:

18 (a) requirements and procedures for permit applications, including standard application forms;

19 (b) requirements and procedures for submittal of information necessary to determine the location,
20 quantity, and type of emissions;

21 (c) procedures for public notice and opportunity for comment or public hearing, as appropriate;

22 (d) procedures for providing notice and an opportunity for comment to contiguous states and federal
23 agencies, as appropriate;

24 (e) requirements for inspection, monitoring, recordkeeping, and reporting;

25 (f) procedures for the transfer of permits;

26 (g) requirements and procedures for suspension, modification, and revocation of permits by the
27 department;

28 (h) requirements and procedures for appropriate emission limitations and other requirements,

1 including enforceable measures necessary to ensure compliance with those limitations and requirements;

2 (i) requirements and procedures for permit modification and amendment; and

3 (j) requirements and procedures for issuing a single permit authorizing emissions from similar
4 operations at multiple temporary locations, which permit may include conditions necessary to ensure
5 compliance with the requirements of this chapter at all authorized locations and a requirement that the owner or
6 operator notify the department in advance of each change in location.

7 (4) This section does not restrict the ~~board's~~ department's authority to adopt regulations providing for
8 a single air quality permit system.

9 (5) Department approval of an application to transfer a portable emission source from one location to
10 another is exempt from the provisions of 75-1-201(1).

11 (6) The department may, for good cause shown, waive or shorten the time required for filing the
12 appropriate applications.

13 (7) The department shall require that applications for permits be accompanied by any plans,
14 specifications, and other information that it considers necessary.

15 (8) An application is not considered filed until the applicant has submitted all fees required under 75-
16 2-220 and all information and completed application forms required pursuant to subsections (2), (3), and (7) of
17 this section. If the department fails to notify the applicant in writing within 30 days after the purported filing of an
18 application that the application is incomplete and fails to list the reasons why the application is considered
19 incomplete, the application is considered filed as of the date of the purported filing.

20 (9) (a) Except as provided in 75-1-205(4) and 75-1-208(4)(b), if an application for a permit requires
21 the preparation of an environmental impact statement under the Montana Environmental Policy Act, Title 75,
22 chapter 1, parts 1 through 3, the department shall notify the applicant in writing of the approval or denial of the
23 application:

24 (i) within 180 days after the department's receipt of a filed application, as provided in subsection (8), if
25 the department prepares the environmental impact statement;

26 (ii) within 30 days after issuance of the final environmental impact statement by the lead agency if a
27 state agency other than the department has been designated by the governor as lead agency for preparation of
28 the environmental impact statement; or

1 (iii) if the application is for a machine, equipment, a device, or a facility at an operation that requires a
2 permit under Title 82, chapter 4, part 1, 2, or 3, within 30 days of issuance of the final environmental impact
3 statement in accordance with time requirements of Title 82, chapter 4, part 1, 2, or 3.

4 (b) If an application does not require the preparation of an environmental impact statement, is not
5 subject to the provisions of 75-2-215, and is not subject to the federal air quality permitting provisions of 42
6 U.S.C. 7475, 7503, or 7661a, the department shall notify the applicant in writing within 60 days after its receipt
7 of a filed application, as provided in subsection (8), of its approval or denial of the application, except as
8 provided in subsection (14).

9 (c) If an application does not require the preparation of an environmental impact statement and is
10 subject to the federal air permitting provisions of 42 U.S.C. 7475, 7503, or 7661a, the department shall notify
11 the applicant, in writing, within 75 days after its receipt of a filed application, as provided in subsection (8), of its
12 approval or denial of the application.

13 (d) Except as provided in subsection (9)(e), if an application does not require the preparation of an
14 environmental impact statement and is subject to the provisions of 75-2-215, the department shall notify the
15 applicant of its approval or denial of the application, in writing, within 75 days after its receipt of a filed
16 application, as provided in subsection (8).

17 (e) If an application for a permit is for the construction, installation, alteration, or use of a source that
18 is also required to obtain a license pursuant to 75-10-221 or a permit pursuant to 75-10-406, the department
19 shall prepare a single environmental review document pursuant to Title 75, chapter 1, for the permit required
20 under this section and the license or permit required under 75-10-221 or 75-10-406 and act on the applications
21 within the time period provided for in 75-2-215(3)(e).

22 (f) The time for notification may be extended for 30 days by written agreement of the department and
23 the applicant. Additional 30-day extensions may be granted by the department upon the request of the
24 applicant. Notification of approval or denial may be served personally or by certified mail on the applicant or the
25 applicant's agent.

26 (g) Failure by the department to act in a timely manner does not constitute approval or denial of the
27 application. This does not limit or abridge the right of any person to seek available judicial remedies to require
28 the department to act in a timely manner.

(10) Except as provided in 75-2-213, when the department approves or denies the application for a permit under this section, a person who is directly and adversely affected by the department's decision may request a hearing before the ~~board~~ department. The request for hearing must be filed within 15 days after the department renders its decision. An affidavit setting forth the grounds for the request must be filed within 30 days after the department renders its decision. The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing before the ~~board~~ department under this subsection.

(11) Except as provided in 75-2-213:

(a) the department's decision on the application is not final until 15 days have elapsed from the date of the decision;

(b) the filing of a request for hearing does not stay the department's decision. However, the ~~board~~ department may order a stay upon receipt of a petition and a finding, after notice and opportunity for hearing, that:

(i) the person requesting the stay is entitled to the relief demanded in the request for a hearing; or

(ii) continuation of the permit during the appeal would produce great or irreparable injury to the person requesting the stay.

(c) upon granting a stay, the ~~board~~ department may require a written undertaking to be given by the party requesting the stay for the payment of costs and damages incurred by the permit applicant and its employees if the ~~board~~ department determines that the permit was properly issued. When requiring an undertaking, the ~~board~~ department shall use the same procedures and limitations as are provided in 27-19-306(2) through (4) for undertakings on injunctions.

(12) The ~~board~~ department shall provide, by rule, a period of 30 days in which the public may submit comments on draft air quality permits for applications that:

(a) are subject to the federal air quality permitting provisions of 42 U.S.C. 7475, 7503, or 7661a;

(b) are subject to the requirements of 75-2-215; or

(c) require the preparation of an environmental impact statement.

(13) The ~~board~~ department shall provide, by rule, a period of 15 days in which the public may submit comments on draft air quality permits not subject to subsection (12).

(14) The ~~board~~ department shall provide, by rule, the basis upon which the department may extend by

1 15 days:

2 (a) the period as provided in subsection (13) in which the public may submit comments on draft air
3 quality permits not subject to subsection (12); and

4 (b) the period for notifying an applicant of its final decision on approval or denial of an application, as
5 provided in subsection (9)(b).

6 (15) (a) The ~~board~~department may adopt rules for issuance, modification, suspension, revocation,
7 renewal, or creation of:

8 (i) general permits covering multiple similar sources; or

9 (ii) other permits covering multiple similar sources.

10 (b) Rules adopted pursuant to subsection (15)(a) may provide for construction and operation under
11 the permit upon authorization by the department or upon notice to the department."

12

13 **Section 23.** Section 75-2-212, MCA, is amended to read:

14 **"75-2-212. Variances -- renewals -- filing fees.** (1) A person who owns or is in control of a plant,
15 building, structure, process, or equipment may apply to the ~~board~~department for an exemption or partial
16 exemption from rules governing the quality, nature, duration, or extent of emissions of air pollutants. The
17 application must be accompanied by information and data that the ~~board~~department may require. The ~~board~~
18 department may grant an exemption or partial exemption if it finds that:

19 (a) the emissions occurring or proposed to occur do not constitute a danger to public health or safety;
20 and

21 (b) compliance with the rules from which an exemption is sought would produce hardship without
22 equal or greater benefits to the public.

23 (2) An exemption or partial exemption may not be granted pursuant to this section except after public
24 hearing on due notice and until the ~~board~~department has considered the relative interests of the applicant,
25 other owners or property likely to be affected by the emissions, and the general public.

26 (3) The exemption or partial exemption may be renewed if a complaint is not made to the ~~board~~
27 department because of it or if, after the complaint has been made and duly considered at a public hearing held
28 by the ~~board~~department on due notice, the ~~board~~department finds that renewal is justified. A renewal may not

1 be granted except on application. An application must be made at least 60 days before the expiration of the
2 exemption or partial exemption. Immediately before application for renewal, the applicant shall give public
3 notice of the application in accordance with rules of the ~~board~~ department. A renewal pursuant to this
4 subsection must be on the same grounds and subject to the same limitations and requirements as provided in
5 subsection (1).

6 (4) An exemption, partial exemption, or renewal is not a right of the applicant or holder but may be
7 granted at the discretion of the ~~board~~ department. However, a person adversely affected by an exemption,
8 partial exemption, or renewal granted by the ~~board~~ department may obtain judicial review as provided by 75-2-
9 411.

10 (5) This section and an exemption, partial exemption, or renewal granted pursuant to this section may
11 not be construed to prevent or limit the application of the emergency provisions and procedures of 75-2-402 to
12 a person or the person's property.

13 (6) A person who owns or is in control of a plant, building, structure, process, or equipment, which are
14 called facilities, who applies to the ~~board~~ department for an exemption or partial exemption or a renewal of an
15 exemption or partial exemption from a rule governing the quality, nature, duration, or extent of emissions of air
16 pollutants shall submit with the application for variance a sum of not less than \$500 or 2% of the cost of the
17 equipment to bring the facility into compliance with the rule for which a variance is sought, whichever is greater,
18 but not to exceed \$80,000. The department shall prepare a statement of actual costs, and funds in excess of
19 this must be returned to the applicant. The person requesting the variance shall describe the facility in sufficient
20 detail, with accompanying estimates of cost and verifying materials, to permit the department to determine with
21 reasonable accuracy the sum of the fee. For a renewal of an exemption or partial exemption, if a public hearing,
22 environmental impact statement, or appreciable investigation by the department is not necessary, the minimum
23 filing fee applies or the fee may be waived by the department. The filing fee must be deposited in the state
24 special revenue fund provided for in 17-2-102. It is the intent of the legislature that the revenue derived from the
25 filing fees must be used by the department to:

- 26 (a) compile the information required for rendering a decision on the request;
- 27 (b) compile the information necessary for any environmental impact statements;
- 28 (c) offset the costs of a public hearing, printing, or mailing; and

(d) carry out its other responsibilities under this chapter."

Section 24. Section 75-2-213, MCA, is amended to read:

"75-2-213. Energy development project -- hearing and procedures. (1) (a) When the department approves or denies the application for a permit under 75-2-211 for an energy development project, the applicant or a person who has provided the department with formal comments and who is directly and adversely affected by the department's decision may request a hearing before the ~~board~~ department. If the department provided an opportunity for public comment on the application, the request for a hearing must be limited to those issues raised in comments made to the department during the comment period unless the issues are related to a material change in federal or state law made during the comment period, to a judicial decision issued after the comment period, or to a material change to the draft permit, which was submitted for public comment, made by the department in the final permit decision and upon which the public did not have a meaningful opportunity to comment. The request for hearing must be filed within 30 days after the department renders its decision. An affidavit setting forth the grounds for the request must be filed with the request for a hearing.

(b) (i) If a hearing is requested by a person other than the applicant for or permittee of an energy development project, the applicant or permittee may, by filing a written election with the ~~board~~ department within 15 days of receipt of the request for hearing, elect to have the matter proceed to hearing before the ~~board~~ department or to have the matter submitted directly to the district court for judicial review of the agency decision. The party who requests the hearing may elect to have the matter submitted either to the ~~board~~ department for a hearing or to the district court for judicial review by submitting a written election to the ~~board~~ department with the request for hearing. If there are conflicting elections between the parties, the matter must proceed to district court.

(ii) If the applicant or permittee is not the person who requested the hearing and has elected to have the matter submitted to the district court, the person who submitted the request for a hearing shall file a petition for review of the permit decision within 15 days of receipt of notice from the permittee. If the person who requested the hearing has elected to have the matter proceed to district court, that person shall file a petition in district court within 15 days of filing the request.

(iii) The petition must be limited to matters raised in the request for hearing and must be filed in the

1 county in which the facility is located.

2 (iv) If a party does not elect to submit the matter directly to district court, the matter must proceed
3 through the contested case process before the ~~board~~-department pursuant to the Montana Administrative
4 Procedure Act.

5 (v) The ~~board~~-department or the district court shall apply the laws and rules in place when the
6 department issued its decision, and the ~~board~~-department or the district court may not consider any issue that
7 was not presented to the department for the department's consideration during the formal comment period
8 unless the issue is related to a material change in federal or state law made during the comment period, to a
9 judicial decision issued after the comment period, or to a material change to the draft permit, which was
10 submitted for public comment, made by the department in the final permit decision and upon which the public
11 did not have a meaningful opportunity to comment.

12 (c) (i) Except as provided in subsection (1)(c)(ii), if the person requesting the hearing is not the
13 applicant or permittee of an energy development project, the ~~board~~-department or the district court shall require
14 a written undertaking to be given by the party requesting the hearing for the payment of costs and damages
15 incurred by the permit applicant and its employees if the request for a hearing or judicial review was for an
16 improper purpose designed to harass, cause unnecessary delay, or improperly interfere with the issuance of
17 the permit without a reasonable basis in law or fact.

18 (ii) The ~~board~~-department or the district court may not require a written undertaking if the party
19 requesting the hearing is an indigent person.

20 (d) If grounds for requesting the hearing are based on alleged error in applying best available control
21 technology requirements, the ~~board~~-department or the district court shall give deference to the best available
22 control technology determination made by the department. The ~~board~~-department or the district court may not
23 reject the best available control technology determination unless the determination was incorrect as a matter of
24 law or the factual basis for the determination was clearly erroneous.

25 (2) The ~~board~~-department shall issue a final decision within 4 months from the close of the hearing on
26 the merits or, if no hearing is held, within 3 months from the date that briefing by the parties is complete unless
27 the applicant or permittee and the party other than the applicant or permittee agree in writing to an extension of
28 time. The ~~board~~-department shall require the parties to prepare the case for hearing without unreasonable

1 delay.

2 (3) (a) Any requirement in a permit to commence construction, installation, or alteration within a
3 certain time period is tolled during a contested case or judicial review proceeding, but not by more than 12
4 months, unless the applicant or permittee in its discretion waives the tolling in writing.

5 (b) If there are multiple appeals of one permit, tolling under this subsection (3) may not exceed a total
6 of 12 months for all appeals.

7 (c) The applicant may not engage in construction during the period that the time period is tolled under
8 subsection (3)(a).

9 (4) The department shall, for good cause shown, waive for up to 1 year any requirement that
10 construction of an energy development project must proceed with due diligence. During the period that a waiver
11 is in effect, an air quality permit does not expire because construction of an energy development project failed
12 to proceed with due diligence."

13

14 **Section 25.** Section 75-2-215, MCA, is amended to read:

15 **"75-2-215. Solid or hazardous waste incineration -- additional permit requirements.** (1) Until the
16 department has issued an air quality permit pursuant to 75-2-211 that includes the conditions required by this
17 section, a person may not construct, install, alter, or use a solid or hazardous waste incinerator or a boiler or
18 industrial furnace subject to the provisions of 75-10-406, except as provided in subsection (2).

19 (2) An existing or permitted solid or hazardous waste incinerator or a boiler or industrial furnace
20 subject to the provisions of 75-10-406 is subject to the provisions of subsection (1) only if it incinerates or uses
21 as fuel or would incinerate or use as fuel solid or hazardous waste in an amount, form, kind, or content that
22 changes the nature, character, or composition of its emissions from its design or permitted operation.

23 (3) The department may not issue a permit to a facility described in subsection (1) until:

24 (a) the owner or operator has provided to the department's satisfaction:

25 (i) a characterization of emissions and ambient concentrations of air pollutants, including hazardous
26 air pollutants, from any existing emission source at the facility; and

27 (ii) an estimate of emissions and ambient concentrations of air pollutants, including hazardous air
28 pollutants, from the incineration of solid or hazardous waste or the use of hazardous waste as fuel for a boiler

1 or industrial furnace, as proposed in the permit application or modification;

2 (b) if a license is required pursuant to 75-10-221 or a permit is required pursuant to 75-10-406, the
3 applicant has published, in the county where the project is proposed, at least three notices, in accordance with
4 the procedures identified in 7-1-4127, describing the proposed project;

5 (c) if a license is required pursuant to 75-10-221 or a permit is required pursuant to 75-10-406, the
6 department has conducted a public hearing on an environmental review prepared pursuant to Title 75, chapter
7 1, and, as appropriate, provided additional opportunities for the public to review and comment on the permit
8 application or modification;

9 (d) the department has reached a determination that the projected emissions and ambient
10 concentrations will constitute a negligible risk to the public health, safety, and welfare and to the environment;
11 and

12 (e) the department has issued a license pursuant to 75-10-221 or a permit pursuant to 75-10-406, if a
13 license or permit is required. The decision to issue, deny, or alter a permit pursuant to 75-2-211 and this section
14 must be made within 30 days from when the department issues a license pursuant to 75-10-221 or a permit
15 pursuant to 75-10-406 or within 90 days after the receipt of a complete application for a permit or a permit
16 alteration under 75-2-211 and this section, whichever is later.

17 (4) The department shall require the application of air pollution control equipment, engineering, or
18 other operating procedures as necessary to provide reductions of air pollutants, including hazardous air
19 pollutants, equivalent to or more stringent than those achieved through the best available control technology.

20 (5) ~~The board~~the department may by rule provide for general air quality permits under the provisions of
21 75-2-211 and this section. The rules must cover numerous similar classes or categories of incinerators and
22 boilers or industrial furnaces.

23 (6) This section does not relieve an owner or operator of a solid or hazardous waste incinerator or a
24 boiler or industrial furnace that is not included under subsection (1) from the obligation to obtain any permit
25 otherwise required under this chapter or rules implementing this chapter."

26
27 **Section 26.** Section 75-2-217, MCA, is amended to read:

28 **"75-2-217. Operating permit program -- exemptions -- general requirements -- duration.** (1) The

1 ~~board-department~~ shall provide by rule for the issuance, expiration, modification, amendment, suspension,
2 revocation, and renewal of operating permits as part of an operating permit program to be administered by the
3 department under this chapter. The ~~board-department~~ shall promulgate rules that are consistent with the
4 operating permit framework and guidelines outlined in Subchapter V of the federal Clean Air Act and
5 implementing regulations.

6 (2) This section applies to all sources of air pollutants that are subject to the provisions of Subchapter
7 V of the federal Clean Air Act, 42 U.S.C. 7661, et seq.

8 (3) A person may not violate any requirement of an operating permit issued under 75-2-218 and this
9 section or operate any source required to have a permit under this section without having complied with the
10 requirements of the operating permit program administered by the department pursuant to 75-2-218, 75-2-219,
11 and this section.

12 (4) The ~~board-department~~ may by rule provide for the exemption of one or more source categories, in
13 whole or in part, from all or part of the requirements of this section if the ~~board-department~~ determines that
14 compliance with the requirements of this section is impracticable, infeasible, or unnecessarily burdensome for
15 the sources. The ~~board-department~~ may premise this determination upon a similar determination by the
16 appropriate federal agency acting pursuant to the federal Clean Air Act, 42 U.S.C. 7401, et seq.

17 (5) The ~~board-department~~ may by rule provide for general operating permits covering numerous
18 similar sources.

19 (6) An operating permit issued by the department under 75-2-218 and this section is effective for a
20 period not to exceed 5 years and may be renewed.

21 (7) The operating permit program administered by the department pursuant to this section must
22 include the following:

23 (a) adequate procedures that are streamlined and reasonable for:

24 (i) expeditiously determining when applications are complete;

25 (ii) processing applications; and

26 (iii) expeditiously reviewing permit actions, including application renewals or revisions;

27 (b) requirements and procedures for submittal of information necessary to determine the location,
28 quantity, and type of emissions;

- 1 (c) procedures for public notice and opportunity for comment or public hearing, as appropriate;
- 2 (d) procedures for providing notice and an opportunity for comment to contiguous states and federal
- 3 agencies, as appropriate;
- 4 (e) requirements for inspection, monitoring, recordkeeping, compliance certification, and reporting;
- 5 (f) deadlines for submitting permit applications and compliance plans that are not later than 12
- 6 months after the source becomes subject to the operating permit requirement;
- 7 (g) deadlines for submitting permit renewal applications that are not later than 6 months before
- 8 expiration of the existing operating permit;
- 9 (h) requirements for compliance plans that must be submitted with permit and renewal applications,
- 10 including schedules of compliance and progress reports;
- 11 (i) requirements and procedures for periodic certification of source compliance with permit
- 12 requirements, including the prompt reporting of any deviations from permit requirements;
- 13 (j) requirements for submission of any plans, specifications, or other information that the department
- 14 considers necessary under this section;
- 15 (k) conditions and procedures for the transfer of operating permits;
- 16 (l) requirements and procedures for suspension, modification, amendment, and revocation of permits
- 17 by the department for cause, including the modification or amendment of permits before renewal or termination
- 18 to incorporate applicable limitations or requirements effective after permit issuance;
- 19 (m) requirements and procedures for incorporating into permits and permit renewals all applicable
- 20 emission limitations and other requirements, including enforceable measures necessary to ensure compliance
- 21 with those limitations and requirements;
- 22 (n) requirements and procedures for permit modification and amendment;
- 23 (o) procedures for tracking activities conducted under general permits;
- 24 (p) requirements and procedures for issuing a single operating permit authorizing emissions from
- 25 similar operations at multiple temporary locations, which permit may include conditions necessary to ensure
- 26 compliance with the requirements of this chapter at all authorized locations and a requirement that the owner or
- 27 operator notify the department in advance of each change in location;
- 28 (q) requirements and procedures for allowing changes within a permitted facility without requiring a

1 permit amendment if the changes are not prohibited under this chapter and do not exceed the emissions
2 allowable under the permit; and
3 (r) other requirements necessary for the department to obtain the authorization to administer an
4 operating permit program under the provisions of Subchapter V of the federal Clean Air Act."

5
6 **Section 27.** Section 75-2-218, MCA, is amended to read:

7 **"75-2-218. Permits for operation -- application completeness -- action by department --**
8 **application shield -- review by ~~board~~ department.** (1) An application for an operating permit or renewal is not
9 considered filed until the department has determined that it is complete. An application is complete if all fees
10 required under 75-2-220 and all information and completed application forms required under 75-2-217 have
11 been submitted. A complete application must contain all of the information required for the department to begin
12 processing the application. If the department fails to notify the applicant in writing within 60 days after submittal
13 of an application that the application is incomplete and fails to list the reasons why the application is considered
14 incomplete, the application is considered filed on the date of the department's receipt of the application. The
15 department may request additional information after a completeness determination has been made. The ~~board~~
16 department shall adopt rules that contain criteria for use in determining both when an application is complete
17 and when additional information is required after a completeness determination has been made.

18 (2) Except as provided in 75-1-208(4)(b) and subsection (3) of this section, the department shall,
19 consistent with the procedures established under 75-2-217, approve or disapprove a complete application for
20 an operating permit or renewal and shall issue or deny the permit or renewal within 18 months after the date of
21 filing. Failure of the department to act in a timely manner does not constitute approval or denial of the
22 application. This does not limit or abridge the right of any person to seek available judicial remedies to require
23 the department to act in a timely manner.

24 (3) The ~~board~~ department may by rule provide for a transition schedule for both the submittal to the
25 department of initial applications for operating permits by existing sources and action by the department on
26 these initial permit applications. The ~~board~~ department may require that one-third of all operating permit
27 applications required for existing sources be submitted within the first calendar year after the adoption of rules
28 implementing an operating permit program under 75-2-217.

1 (4) If an applicant submits a timely and complete application for an operating permit, the applicant's
2 failure to hold a valid operating permit is not a violation of 75-2-217. If an applicant submits a timely and
3 complete application for an operating permit renewal, the expiration of the applicant's existing operating permit
4 is not a violation of 75-2-217. The applicant shall continue to be subject to the terms and conditions of the
5 expired operating permit until the operating permit is renewed and is subject to the application of 75-2-217. The
6 applicant is not entitled to the protection of this subsection if the delay in final action by the department on the
7 application results from the applicant's failure to submit in a timely manner information requested by the
8 department to process the application.

9 (5) Except as provided in subsection (8), if the department approves or denies an application for an
10 operating permit or the renewal, modification, or amendment of a permit under 75-2-217 and this section, any
11 person that participated in the public comment process required under 75-2-217(7) may request a hearing
12 before the ~~board~~ department. The request for a hearing must be filed within 30 days after the department
13 renders its decision and must include an affidavit setting forth the grounds for the request. The contested case
14 provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing before the
15 ~~board~~ department under this subsection.

16 (6) (a) Except as provided in subsection (8), the department's decision on any application is not final
17 until 30 days have elapsed from the date of the decision.

18 (b) Except as provided in subsection (8), the filing of a request for hearing does not stay the
19 department's decision. However, the ~~board~~ department may order a stay upon receipt of a petition and a
20 finding, after notice and opportunity for an informal hearing, that:

21 (i) the person requesting the hearing is entitled to the relief demanded in the request for a hearing; or

22 (ii) continuation of the permit during the appeal would produce great or irreparable injury to the person
23 requesting the hearing.

24 (c) Upon granting a stay, the ~~board~~ department may require a written undertaking to be given by the
25 party requesting the stay for the payment of costs and damages incurred by the permit applicant and its
26 employees if the ~~board~~ department determines that the permit was properly issued. When requiring an
27 undertaking, the ~~board~~ department shall use the same procedures and limitations as are provided in 27-19-
28 306(2) through (4) for undertakings on injunctions.

(7) The requirements of subsections (5) and (6) also apply to any action initiated by the department to suspend, revoke, modify, or amend an operating permit issued under this section.

(8) The denial by the department of an application under 75-2-217 and this section is not subject to review by the ~~board~~ department or judicial review if the basis for denial is the written objection of the appropriate federal agency acting pursuant to the federal Clean Air Act, 42 U.S.C. 7401, et seq.

(9) Compliance with an operating permit granted or renewed under 75-2-217 and this section is considered to be compliance with the requirements of this chapter only if the permit expressly includes those requirements or an express determination that those requirements are not applicable. This subsection does not apply to general permits provided for under 75-2-217."

Section 28. Section 75-2-219, MCA, is amended to read:

"75-2-219. Permits for operation -- limitations. Sections 75-2-217 and 75-2-218 may not be construed to:

(1) affect the department's issuance of a permit for the construction, installation, alteration, or use of a source of air pollutants pursuant to 75-2-211 or 75-2-215;

(2) restrict the ~~board's~~ department's authority to adopt regulations providing for a single air quality permit system; or

(3) affect permits, allowances, phase II compliance schedules, or other acid rain provisions under Subchapter IV of the federal Clean Air Act, 42 U.S.C. 7651, et seq."

Section 29. Section 75-2-220, MCA, is amended to read:

"75-2-220. Fees -- special assessments -- late payment assessments -- credit. (1) A person required to obtain a permit or to register a facility pursuant to this chapter shall submit to the department fees set ~~by the board~~ pursuant to ~~75-2-111~~ 75-2-112 that are sufficient to cover the reasonable costs, direct and indirect, of developing and administering the permitting or registration requirements in this chapter, including:

(a) reviewing and acting upon a permit application or a registration or modifying, amending, or updating a permit or registration;

(b) implementing and enforcing the terms and conditions of a permit issued pursuant to this chapter or

1 an administrative rule or other regulatory requirement adopted pursuant to this chapter. This does not include
2 any court costs or other costs associated with an enforcement action. If the permit is not issued, the department
3 shall return this portion of the fee to the applicant.

4 (c) emissions and ambient monitoring;

5 (d) preparing generally applicable rules or guidance;

6 (e) modeling, analysis, and demonstrations;

7 (f) preparing inventories and tracking emissions;

8 (g) providing support to sources under the small business stationary source technical and
9 environmental compliance assistance program; and

10 (h) all other costs required to be recovered pursuant to Subchapter V of the federal Clean Air Act, 42
11 U.S.C. 7661, et seq.

12 (2) For a permit or registration fee based on emissions, the fee must be based on emissions of air
13 pollutants regulated under this chapter, including but not limited to volatile organic compounds, each air
14 pollutant regulated under section 7411 or 7412 of the federal Clean Air Act, 42 U.S.C. 7401, et seq., and each
15 air pollutant subject to a national primary ambient air quality standard.

16 (3) The ~~board~~department shall by rule provide for the annual review of all fees assessed for persons
17 holding an operating permit issued under 75-2-217 and 75-2-218 to ensure the collection of revenue sufficient
18 to cover the costs of administering the operating permit requirements of this chapter, as required by Subchapter
19 V of the federal Clean Air Act.

20 (4) In addition to the fees required under subsection (1), the ~~board~~department may order the
21 assessment of additional fees required to fund specific activities of the department that are directed at a
22 particular geographic area if the legislature authorizes the activities and appropriates funds for the activities,
23 including emissions or ambient monitoring, modeling analysis or demonstrations, and emissions inventories or
24 tracking. Additional assessments may be levied only on those sources that are within or are believed by the
25 department to be impacting the geographic area. Before the ~~board~~department may require the fees, it shall first
26 determine, after opportunity for hearing, that the activities to be funded are necessary for the administration or
27 implementation of this chapter, that the amount of the requested fees is appropriate, that the assessments
28 apportion the required funding in an equitable manner, and that the department has obtained the necessary

1 appropriation. The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4,
2 part 6, apply to a hearing before the ~~board~~department under this subsection.

3 (5) (a) If the permitholder or registrant fails to pay in a timely manner a fee required under subsection
4 (1), in addition to the fee, the department may:

5 (i) impose a penalty not to exceed 50% of the fee, plus interest on the required fee computed as
6 provided in 15-1-216; or

7 (ii) revoke the permit or registration consistent with those procedures established under this chapter for
8 permit revocation.

9 (b) Within 1 year of revocation, the department may reissue the revoked permit or registration after
10 the permitholder or registrant has paid all outstanding fees required under subsections (1) and (4), including all
11 penalties and interest provided for under this subsection (5). In reissuing the revoked permit, the department
12 may modify the terms and conditions of the permit as necessary to account for changes in air quality occurring
13 since revocation.

14 (c) The ~~board~~department shall by rule provide for the implementation of this subsection (5), including
15 criteria for imposition of the sanctions described in this subsection (5).

16 (6) The ~~board~~department may by rule allow the reduction of a fee required under this section for an
17 operating permit or permit renewal to account for the financial resources of a category of small business
18 stationary sources.

19 (7) As a condition of the continuing validity of a permit issued by the department under this chapter
20 prior to October 1, 1993, the ~~board~~department may by rule require the permitholder to pay the fees under
21 subsections (1) and (4).

22 (8) For an existing source of air pollutants that is subject to Subchapter V of the federal Clean Air Act
23 and that is not required to hold an air quality permit from the department as of October 1, 1993, the ~~board~~
24 department may, as a condition of continued operation, require by rule that the owner or operator of the source
25 pay the fees under subsections (1) and (4).

26 (9) (a) The department shall give written notice of the fee to be assessed and the basis for the
27 department's fee assessment under this section to the owner or operator of the air pollutant source. The owner
28 or operator may appeal the department's fee assessment ~~to the board~~ within 20 days after receipt of the written

1 notice.

2 (b) An appeal must be based upon the allegation that the fee assessment is erroneous or excessive.

3 An appeal may not be based on the amount of the fee contained in the schedule adopted by the ~~board~~
4 department.

5 (c) If any part of the fee assessment is not appealed, it must be paid to the department upon receipt
6 of the notice required in subsection (9)(a).

7 (d) The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4,
8 part 6, apply to a hearing before the ~~board~~ department under this subsection (9).

9 (10) The total of the fees charged to an applicant under subsections (1) and (4) of this section must be
10 reduced by the amount of any credit accruing to the applicant under 75-2-225. The department may not
11 increase fee assessments beyond legislative appropriation levels to adjust for any credit claimed under 75-2-
12 225. The credit applied under 75-2-225 may not limit the department's ability to collect fees sufficient to cover
13 the reasonable costs, both direct and indirect, of developing and administering the permitting and registration
14 requirements of this chapter."
15

15

16 **Section 30.** Section 75-2-221, MCA, is amended to read:

17 **"75-2-221. Deposit of air quality permitting and registration fees.** (1) All money collected by the
18 department pursuant to ~~75-2-111~~ 75-2-112 and 75-2-220 must be deposited in an account in the state special
19 revenue fund to be appropriated by the legislature to the department for the development and administration of
20 the permitting and registration requirements of this chapter.

21 (2) Upon request, the expenditure by the department of funds in this account may be audited by a
22 qualified auditor at the end of each fiscal year. The cost of the audit must be paid by the person requesting the
23 audit."
24

24

25 **Section 31.** Section 75-2-231, MCA, is amended to read:

26 **"75-2-231. Medical waste and hazardous waste incineration -- additional permit requirements.**

27 (1) Because of the potential emission of chlorinated dioxins, furans, heavy metals, and carcinogens as a result
28 of the incineration of medical waste and hazardous waste and the potential health risk these chemicals pose,

1 the ~~board~~ department shall adopt rules establishing additional permit requirements for commercial medical
2 waste and commercial hazardous waste incinerators. For the purposes of this section, the term "commercial
3 medical waste incinerator" does not include hospital or medical facility incinerators that primarily incinerate
4 medical waste generated onsite. The ~~board~~ department shall adopt rules that:

5 (a) regulate the type and amount of plastic and other materials in the medical waste stream and
6 hazardous waste stream that may be a source of chlorine, in order to minimize the potential emission of
7 chlorinated dioxins, furans, and carcinogens;

8 (b) require commercial medical waste and commercial hazardous waste incinerators to achieve the
9 lowest achievable emission rate to prevent the public health risk from air emissions or ambient concentrations
10 from exceeding the negligible risk standard required by 75-2-215 and any applicable federal allowable intake
11 standards, as determined pursuant to subsection (3), for dioxins, furans, heavy metals, and other hazardous air
12 pollutants;

13 (c) implement the requirements of subsection (2), including establishing procedures and standards for
14 the collection of high-quality scientific information and for the submission of the information by the applicant;

15 (d) establish procedures for the monitoring, testing, and inspection of:

16 (i) the medical waste stream and hazardous waste stream, including heavy metals and possible
17 precursors to the formation of chlorinated dioxins, furans, and carcinogens;

18 (ii) combustion, including destruction and removal efficiencies; and

19 (iii) emissions, including continuous emission monitoring and air pollution control devices; and

20 (e) are necessary to implement the provisions of this section and to coordinate the requirements
21 under this section with the requirements contained in 75-2-211 and 75-2-215.

22 (2) A person who applies for an air quality permit or alteration pursuant to 75-2-211 and 75-2-215 for
23 a commercial medical waste incinerator or commercial hazardous waste incinerator shall provide, to the
24 satisfaction of the department, the following information:

25 (a) a dispersion model of emissions, using approved methods, and those studies that are necessary
26 to identify the potential community exposure;

27 (b) an analysis of the potential pathways for human exposure to air contaminants, particularly
28 chlorinated dioxins, furans, heavy metals, and other carcinogens, including the potential for inhalation,

1 ingestion, and physical contact by the affected communities; and

2 (c) a quantitative analysis of the estimated total possible human exposure to chlorinated dioxins,
3 furans, heavy metals, and carcinogens for the affected communities.

4 (3) The department may not issue or alter an air quality permit pursuant to this chapter until the
5 department has determined, based upon an analysis of the information provided by the applicant pursuant to
6 subsection (2) and other necessary and relevant data, that the public health risk from air emissions or ambient
7 concentrations of chlorinated dioxins, furans, heavy metals, and other hazardous air pollutants will not exceed
8 the negligible risk standard required by 75-2-215 and any applicable federal standards for allowable intake, as
9 determined by the department after a review of established and relevant federal standards and guidelines.

10 (4) This section may not be construed in any way to:

11 (a) require the ~~board~~ department to promulgate standards for the allowable intake of any substances
12 for which the federal government has not established standards;

13 (b) allow the ~~board~~ department to promulgate standards for the allowable intake of any substances for
14 which the federal government has established standards that are more stringent than the federal standards; or

15 (c) limit or otherwise impair the duty of the department under 75-2-215 to determine that emissions
16 and ambient concentrations will constitute a negligible risk as required by 75-2-215(3)(d), including emissions
17 and ambient concentrations of dioxins, furans, heavy metals, and carcinogens, before issuing an air quality
18 permit pursuant to 75-2-211 and 75-2-215."

19

20 **Section 32.** Section 75-2-234, MCA, is amended to read:

21 **"75-2-234. Registration.** The ~~board~~ department may adopt rules for the registration of certain classes
22 of sources of air contaminants in lieu of a permit application required under 75-2-211(2)."

23

24 **Section 33.** Section 75-2-301, MCA, is amended to read:

25 **"75-2-301. Local air pollution control programs -- consistency with state and federal**
26 **regulations -- procedure for public notice and comment required.** (1) After public hearing, a municipality or
27 county may establish and administer a local air pollution control program if the program is consistent with this
28 chapter and is approved by the ~~board~~ department.

(2) If a local air pollution control program established by a county encompasses all or part of a municipality, the county and each municipality shall approve the program in accordance with subsection (1).

(3) (a) Except as provided in subsection (5), the ~~board~~ department by order may approve a local air pollution control program that:

(i) subject to subsection (4), provides by rule, ordinance, or local law for requirements compatible with, more stringent than, or more extensive than those imposed by 75-2-203, 75-2-204, 75-2-211, 75-2-212, 75-2-215, 75-2-217 through 75-2-219, and 75-2-402 and rules adopted under these sections;

(ii) provides for the enforcement of requirements established under subsection (3)(a)(i) by appropriate administrative and judicial processes; and

(iii) provides for administrative organization, staff, financial resources, and other resources necessary to effectively and efficiently carry out the program. As part of meeting these requirements, a local air pollution control program may administer the permit or registration fee provisions of 75-2-220. The permit or registration fees collected by a local air pollution control program must be deposited in a county special revenue fund to be used by the local air pollution control program for administration of local air pollution control program permitting or registration activities.

(b) ~~Board~~ Department approval of a rule, ordinance, or local law that is more stringent than the comparable state law is subject to the provisions of subsection (4).

(4) (a) A local air pollution control program may, subject to approval by the ~~board~~ department, adopt a rule, ordinance, or local law to implement this chapter that is more stringent than comparable state or federal regulations or guidelines only if:

(i) a public hearing is held;

(ii) public comment is allowed; and

(iii) the ~~board~~ department or the local air pollution control program makes a written finding after the public hearing and comment period that is based on evidence in the record that the proposed local standard or requirement:

(A) protects public health or the environment of the area;

(B) can mitigate harm to the public health or the environment; and

(C) is achievable with current technology.

(b) The written finding required under subsection (4)(a)(iii) must reference information and peer-reviewed scientific studies contained in the record that form the basis for the ~~board's~~ department's or the local air pollution control program's conclusion. The written finding must also include information from the hearing record regarding costs to the regulated community that are directly attributable to the proposed local standard or requirement.

(c) (i) A person or entity affected by a rule, ordinance, or local law approved or adopted after January 1, 1996, and before May 1, 2001, that the person or entity believes is more stringent than comparable state or federal regulations or guidelines may petition the ~~board~~ department or the local air pollution control program to review the rule, ordinance, or local law.

(ii) If the ~~board~~ department or local air pollution control program determines that the rule, ordinance, or local law is more stringent than state or federal regulations or guidelines, the ~~board~~ department or local air pollution control program shall either revise the rule, ordinance, or local law to conform to the state or federal regulations or guidelines or follow the process provided in subsections (4)(a) and (4)(b) within a reasonable period of time, not to exceed 6 months after receiving the petition.

(5) Except for those emergency powers provided for in 75-2-402, the ~~board~~ department may not delegate to a local air pollution control program the authority to control any air pollutant source that:

(a) requires the preparation of an environmental impact statement in accordance with Title 75, chapter 1, part 2;

(b) is subject to regulation under the Montana Major Facility Siting Act, as provided in Title 75, chapter 20; or

(c) has the potential to emit 250 tons a year or more of any pollutant subject to regulation under this chapter, including fugitive emissions, unless the authority to control the source was delegated to a local air pollution control program prior to January 1, 1991.

(6) If the ~~board~~ department finds that the location, character, or extent of particular concentrations of population, air pollutant sources, or geographic, topographic, or meteorological considerations or any combination of these makes impracticable the maintenance of appropriate levels of air quality without an areawide air pollution control program, the ~~board~~ department may determine the boundaries within which the program is necessary and require it as the only acceptable alternative to direct state administration.

1 (7) If the ~~board~~department has reason to believe that any part of an air pollution control program in
2 force under this section is either inadequate to prevent and control air pollution in the jurisdiction to which the
3 program relates or is being administered in a manner inconsistent with this chapter, the ~~board~~department shall,
4 on notice, conduct a hearing on the matter.

5 (8) If, after the hearing, the ~~board~~department determines that any part of the program is inadequate
6 to prevent and control air pollution in the jurisdiction to which it relates or that it is not accomplishing the
7 purposes of this chapter, it shall require that necessary corrective measures be taken within a reasonable time,
8 not to exceed 60 days.

9 (9) If the jurisdiction fails to take these measures within the time required, the department shall
10 administer within that jurisdiction all of the provisions of this chapter, including the terms contained in any
11 applicable ~~board~~department order, that are necessary to correct the deficiencies found by the ~~board~~
12 department. The department's control program supersedes all municipal or county air pollution laws, rules,
13 ordinances, and requirements in the affected jurisdiction. The cost of the department's action is a charge on the
14 jurisdiction.

15 (10) If the ~~board~~department finds that the control of a particular air pollutant source because of its
16 complexity or magnitude is beyond the reasonable capability of the local jurisdiction or may be more efficiently
17 and economically performed at the state level, it may ~~direct the department to~~ assume and retain control over
18 that air pollutant source. A charge may not be assessed against the jurisdiction. Findings made under this
19 subsection may be either on the basis of the nature of the sources involved or on the basis of their relationship
20 to the size of the communities in which they are located.

21 (11) A jurisdiction in which the department administers all or part of its air pollution control program
22 under subsection (9) may, ~~with the approval of the board,~~ establish or resume an air pollution control program
23 that meets the requirements of subsection (3).

24 (12) A municipality or county may administer all or part of its air pollution control program in
25 cooperation with one or more municipalities or counties of this state or of other states.

26 (13) Local air pollution control programs established under this section shall provide procedures for
27 public notice, public hearing, public comment, and appeal for any proposed new or revised rules, ordinances, or
28 local laws adopted pursuant to this section. The procedures must comply with the following requirements:

1 (a) The local air pollution control program shall create and maintain a list of interested persons who
2 wish to be informed of actions related to rules, ordinances, or local laws adopted by the local air pollution
3 control program.

4 (b) At least 30 days prior to the adoption, revision, or repeal of a rule, ordinance, or law, the local air
5 pollution control program shall give written notice of its intended action.

6 (c) The notice required under subsection (13)(b) must include:

7 (i) a statement of the terms or substance of the intended action or a description of the subjects and
8 issues affected by the intended action;

9 (ii) an explanation of the procedure for a person to be included on the list of interested persons
10 established pursuant to subsection (13)(a);

11 (iii) an explanation of the procedures and deadlines for presentation of oral or written comments
12 related to the intended action;

13 (iv) an explanation of the process for requesting a public hearing as provided in subsection (13)(f); and

14 (v) the rationale for the intended action. The rationale must:

15 (A) include an explanation of why the intended action is reasonably necessary to implement the goals
16 and purposes of the local air pollution control program;

17 (B) specifically address those intended actions for which there are no similar state or federal
18 regulations or guidelines; and

19 (C) be written in plain, easily understood language.

20 (d) For the purposes of subsection (13)(c)(v), a statement of authority to adopt a rule, ordinance, or
21 local law does not, standing alone, constitute a showing of reasonable necessity for the intended action.

22 (e) The local air pollution control program shall mail a copy of the proposed rule, ordinance, or local
23 law to all interested persons on the list established pursuant to subsection (13)(a) who have made timely
24 requests to be included on the list.

25 (f) If at least 10 of the persons who will be directly affected by the proposed rule, ordinance, or local
26 law request a public hearing, the local air pollution control program shall hold a hearing to hear comments from
27 the public on the intended action.

28 (g) The local air pollution control program shall prepare a written response to all comments submitted

1 in writing or presented at the public hearing for consideration prior to adoption, revision, or repeal of the
2 proposed rule, ordinance, or local law.

3 (h) A person who submits a written comment on a proposed action or who attends a public hearing in
4 regard to a proposed action must be informed of the final action."

5
6 **Section 34.** Section 75-2-302, MCA, is amended to read:

7 **"75-2-302. State and federal aid.** (1) Any local air pollution control program meeting the
8 requirements of this chapter and rules made pursuant ~~thereto shall be~~ to this chapter is eligible for state aid in
9 an amount up to 30% of the locally funded annual operating cost ~~thereof~~ of the program.

10 (2) Federal aid granted to the state for developing or maintaining a local air pollution control program
11 that is subsequently granted to a local program is not considered state aid.

12 (3) Subdivisions of the state may make application for, receive, administer, and expend any federal
13 aid for the control of air pollution or the development and administration of programs related to air pollution
14 control, provided the program is currently approved by the ~~board~~ department under 75-2-301."

15
16 **Section 35.** Section 75-2-401, MCA, is amended to read:

17 **"75-2-401. Enforcement -- notice -- order for corrective action -- administrative penalty.** (1)
18 When the department believes that a violation of this chapter, a rule adopted under this chapter, or a condition
19 or limitation imposed by a permit issued pursuant to this chapter has occurred, it may cause written notice to be
20 served personally or by certified mail on the alleged violator or the violator's agent. The notice must specify the
21 provision of this chapter, the rule, or the permit condition or limitation alleged to be violated and the facts
22 alleged to constitute a violation. The notice may include an order to take necessary corrective action within a
23 reasonable period of time stated in the order or an order to pay an administrative penalty, or both. The order
24 becomes final unless, within 30 days after the notice is received, the person named requests in writing a
25 hearing before the ~~board~~ department. On receipt of the request, the ~~board~~ department shall schedule a hearing.

26 (2) If, after a hearing held under subsection (1), the ~~board~~ department finds that violations have
27 occurred, it shall issue an appropriate order for the prevention, abatement, or control of the emissions involved
28 or for the taking of other corrective action or assess an administrative penalty, or both. As appropriate, an order

1 issued as part of a notice or after a hearing may prescribe the date by which the violation must cease; time
2 limits for particular action in preventing, abating, or controlling the emissions; or the date by which the
3 administrative penalty must be paid. If, after a hearing on an order contained in a notice, the ~~board~~department
4 finds that a violation has not occurred or is not occurring, it shall rescind the order.

5 (3) (a) An action initiated under this section may include an administrative civil penalty of not more
6 than \$10,000 for each day of each violation, not to exceed a total of \$80,000. If an order issued by the ~~board~~
7 department under this section requires the payment of an administrative civil penalty, the ~~board~~department
8 shall state findings and conclusions describing the basis for its penalty assessment.

9 (b) Administrative penalties collected under this section must be deposited in the alternative energy
10 revolving loan account established in 75-25-101.

11 (c) Penalties imposed by an administrative order under this section may not be assessed for any day
12 of violation that occurred more than 2 years prior to the issuance of the initial notice and order by the
13 department under subsection (1).

14 (d) In determining the amount of penalty to be assessed for an alleged violation under this section,
15 the department ~~or board, as appropriate,~~ shall consider the penalty factors in 75-1-1001.

16 (e) The department may bring a judicial action to enforce a final administrative order issued pursuant
17 to this section. The action must be filed in the district court of the county in which the violation occurred or, if
18 mutually agreed on by the parties in the action, in the district court of the first judicial district, Lewis and Clark
19 County.

20 (4) The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4,
21 part 6, apply to a hearing conducted under this section.

22 (5) Instead of issuing the order provided for in subsection (1), the department may either:

23 (a) require that the alleged violators appear before the ~~board~~department for a hearing at a time and
24 place specified in the notice and answer the charges complained of; or

25 (b) initiate action under 75-2-412 or 75-2-413.

26 (6) This chapter does not prevent the ~~board~~or department from making efforts to obtain voluntary
27 compliance through warning, conference, or any other appropriate means.

28 (7) In connection with a hearing held under this section, the ~~board~~department may and on application

1 by a party shall compel the attendance of witnesses and the production of evidence on behalf of the parties."

2
3 **Section 36.** Section 75-2-402, MCA, is amended to read:

4 **"75-2-402. Emergency procedure.** (1) Any other law to the contrary notwithstanding, if the
5 department finds that a generalized condition of air pollution exists and that it creates an emergency requiring
6 immediate action to protect human health or safety, the department shall order persons causing or contributing
7 to the air pollution to immediately reduce or discontinue the emission of air contaminants. Upon issuance of this
8 order, the department shall fix a place and time within 24 hours for a hearing to be held before the ~~board~~
9 department. Within 24 hours after the start of the hearing and without adjournment, the ~~board~~ department shall
10 confirm, modify, or set aside the order of the department.

11 (2) Except as provided in subsection (1), if the department finds that emissions from the operation of
12 one or more air contaminant sources are causing imminent danger to human health or safety, it may order the
13 person responsible for the operation in question to reduce or discontinue emissions immediately, without regard
14 for 75-2-401. In this event, the requirements for hearing and confirmation, modification, or setting aside of
15 orders as provided in subsection (1) apply.

16 (3) This section does not limit any power that the governor or any other officer may have to declare an
17 emergency and act on the basis of this declaration, whether the power is conferred by statute or the constitution
18 or is inherent to the office."
19

20 **Section 37.** Section 75-2-411, MCA, is amended to read:

21 **"75-2-411. Judicial review.** (1) A person aggrieved by an order of the ~~board~~ department or local
22 control authority may apply for rehearing upon one or more of the following grounds and upon no other
23 grounds:

- 24 (a) the ~~board~~ department or local control authority acted without or in excess of its powers;
25 (b) the order was procured by fraud;
26 (c) the order is contrary to the evidence;
27 (d) the applicant has discovered new evidence, material to the applicant, that the applicant could not
28 with reasonable diligence have discovered and produced at the hearing; or

1 (e) competent evidence was excluded to the prejudice of the applicant.

2 (2) The petition must be in a form and filed at a time that the ~~board~~department prescribes.

3 (3) (a) Within 30 days after the application for rehearing is denied or, if the application is granted,
4 within 30 days after the decision on the rehearing, an aggrieved party may appeal to the district court of the
5 judicial district of the state that is the situs of property affected by the order.

6 (b) The appeal must be taken by serving a written notice of appeal upon the ~~presiding officer of the~~
7 ~~board~~ department. Service must be made by the delivery of a copy of the notice to the ~~presiding officer~~
8 department and by filing the original with the clerk of the court to which the appeal is taken. Immediately after
9 service ~~upon the board~~, the ~~board~~ department shall certify to the district court the entire record and
10 proceedings, including all testimony and evidence taken by the ~~board~~ department. Immediately upon receiving
11 the certified record, the district court shall fix a day for filing of briefs and hearing arguments on the cause and
12 shall cause a notice of the dates to be served upon the ~~board~~ department and the appellant.

13 (c) The court shall hear and decide the cause upon the record of the ~~board~~ department. The court
14 shall determine whether or not the ~~board~~ department regularly pursued its authority, whether or not the findings
15 of the ~~board~~ department were supported by substantial competent evidence, and whether or not the ~~board~~
16 department made errors of law prejudicial to the appellant.

17 (4) Either the ~~board~~ department or the person aggrieved may appeal from the decision of the district
18 court to the supreme court. The proceedings before the supreme court must be limited to a review of the record
19 of the hearing before the ~~board~~ department and of the district court's review of that record."
20

21 **Section 38.** Section 75-2-421, MCA, is amended to read:

22 **"75-2-421. Persons subject to noncompliance penalties -- exemptions.** (1) Except as provided in
23 subsection (2), the department may assess and collect a noncompliance penalty from any person who owns or
24 operates:

25 (a) a stationary source (other than a primary nonferrous smelter that has received a nonferrous
26 smelter order under 42 U.S.C. 7419) that is not in compliance with any emission limitation specified in an order
27 of the ~~board~~ department, emission standard, or compliance schedule under the state implementation plan
28 approved by the federal environmental protection agency;

(b) a stationary source that is not in compliance with an emission limitation, emission standard, standard of performance, or other requirement under this chapter or 42 U.S.C. 7411, 7412, 7477, or 7603;

(c) a stationary source that is not in compliance with any other requirement under this chapter or any requirement of Subchapter V of the federal Clean Air Act, 42 U.S.C. 7661, et seq.; or

(d) any source referred to in subsections (1)(a), (1)(b), or (1)(c) that has been granted an exemption, extension, or suspension under subsection (2) or that is covered by a compliance order, or a primary nonferrous smelter that has received a primary nonferrous smelter order under 42 U.S.C. 7419, if that source is not in compliance with any interim emission control requirement or schedule of compliance under the extension, order, or suspension.

(2) Notwithstanding the requirements of subsection (1), the department may, after notice and opportunity for a public hearing, exempt any source from the requirements of 75-2-421 through 75-2-429 with respect to a particular instance of noncompliance that:

(a) the department finds is de minimis in nature and in duration;

(b) is caused by conditions beyond the reasonable control of the source and is of no demonstrable advantage to the source; or

(c) is exempt under 42 U.S.C. 7420(a)(2)(B) of the federal Clean Air Act.

(3) Any person who is jointly or severally adversely affected by the department's decision may request, within 15 days after the department renders its decision, upon affidavit setting forth the grounds for it, a hearing before the ~~board~~ department. A hearing must be held under the provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6."

Section 39. Section 75-2-422, MCA, is amended to read:

"75-2-422. Amount of noncompliance penalty -- late charge. (1) The amount of the penalty ~~which that shall be~~ is assessed and collected with respect to any source under 75-2-421 through 75-2-429 ~~shall~~ must be equal to:

(a) the amount determined in accordance with the rules adopted by the ~~board~~ department, which ~~shall~~ must be no less than the economic value ~~which that~~ that a delay in compliance after July 1, 1979, may have for the owner of ~~such the~~ the source, including the quarterly equivalent of the capital costs of compliance and debt service

1 over a normal amortization period not to exceed 10 years, operation and maintenance costs foregone as a
2 result of noncompliance, and any additional economic value ~~which such a~~ that the delay may have for the
3 owner or operator of such source; minus

4 (b) the amount of any expenditure made by the owner or operator of that source during ~~any such the~~
5 quarter for the purpose of bringing that source into and maintaining compliance with ~~such the~~ requirement, to
6 the extent that ~~such the~~ expenditures have not been taken into account in the calculation of the penalty under
7 subsection (1)(a).

8 (2) To the extent that any expenditure under subsection (1)(b) made during any quarter is not
9 subtracted for ~~such the~~ quarter from the costs under subsection (1)(a), ~~such the~~ expenditure may be subtracted
10 for any subsequent quarter from ~~such the~~ costs. In no event may the amount paid be less than the quarterly
11 payment minus the amount attributed to actual cost of construction.

12 (3) If the owner or operator of any stationary source to whom notice is issued under 75-2-425 does
13 not submit a timely petition under 75-2-425(2)(b) or submits a petition ~~which that~~ is denied and if the owner or
14 operator fails to submit a calculation of the penalty assessment, a schedule for payment, and the information
15 necessary for independent verification thereof, the department may enter into a contract with any person who
16 has no financial interest in the matter to assist in determining the amount of the penalty assessment or payment
17 schedule with respect to ~~such the~~ source. The cost of carrying out ~~such the~~ contract may be added to the
18 penalty to be assessed against the owner or operator of ~~such the~~ source.

19 (4) Any person who fails to pay the amount of any penalty with respect to any source under 75-2-421
20 through 75-2-429 on a timely basis shall ~~be required to pay~~ in addition a quarterly nonpayment penalty for each
21 quarter during which ~~such the~~ failure to pay persists. ~~Such The~~ nonpayment penalty ~~shall be~~ is equal to 20% of
22 the aggregate amount of ~~such the~~ person's penalties and nonpayment penalties with respect to ~~such the~~ source
23 ~~which that~~ are unpaid as of the beginning of ~~such the~~ quarter."

24
25 **Section 40.** Section 75-2-425, MCA, is amended to read:

26 **"75-2-425. Notice of noncompliance -- challenge.** (1) The department shall give a brief but
27 reasonably specific notice of noncompliance to each person who owns or operates a source subject to 75-2-
28 421(1) ~~which that~~ is not in compliance as provided in that subsection, within 30 days after the department has

1 discovered the noncompliance.

2 (2) Each person to whom notice has been given pursuant to subsection (1) shall:

3 (a) calculate the amount of penalty owed (determined in accordance with 75-2-422(1)) and the
4 schedule of payments (determined in accordance with 75-2-423) for each source and, within 45 days after
5 issuance of the notice of noncompliance, submit that calculation and proposed schedule, together with the
6 information necessary for an independent verification thereof, to the department; or

7 (b) submit to the ~~board~~department a petition within 45 days after the issuance of ~~such~~the notice,
8 challenging ~~such~~the notice of noncompliance or alleging entitlement to an exemption under 75-2-421(2) with
9 respect to a particular source.

10 (3) Each person to whom notice of noncompliance is given shall pay the department the amount
11 determined under 75-2-422 as the appropriate penalty unless there has been a final determination granting a
12 petition filed pursuant to subsection (2)(b)."

13

14 **Section 41.** Section 75-2-426, MCA, is amended to read:

15 **"75-2-426. Hearing on challenge.** (1) The ~~board~~department shall provide a hearing on the record
16 and make a decision (including findings of fact and conclusions of law) not later than 90 days after the receipt of
17 any petition under 75-2-425(2)(b) with respect to ~~such~~the source.

18 (2) If the petition is denied, the petitioner shall submit the material required by 75-2-425(2)(a) to the
19 department within 45 days of the date of decision."

20

21 **Section 42.** Section 75-2-428, MCA, is amended to read:

22 **"75-2-428. Effect of new standards on noncompliance penalty.** In the case of any emission
23 limitation, emission standard, or other requirement approved or adopted by the ~~board~~department under this
24 chapter after July 1, 1979, and approved by the federal environmental protection agency as an amendment to
25 the state implementation plan, which is more stringent than the emission limitation or requirement for the source
26 in effect prior to such approval or promulgation, if any, or where there was no emission limitation, emission
27 standard, or other requirement approved or adopted before July 1, 1979, the date for imposition of the
28 noncompliance penalty under 75-2-421 through 75-2-429 shall be the date on which the source is required to

1 be in full compliance with such emission limitation, emission standard, or other requirement or 3 years after the
2 approval or promulgation of such emission limitation or requirement, whichever is sooner."

3
4 **Section 43.** Section 75-2-515, MCA, is amended to read:

5 **"75-2-515. Administrative enforcement.** (1) The department may deny, suspend, or revoke the
6 accreditation of a person that:

7 (a) fraudulently or deceptively obtains or attempts to obtain accreditation;

8 (b) fails to meet the qualifications for accreditation or fails to comply with the requirements of this part,
9 a rule adopted under this part, or a permit or order issued under this part; or

10 (c) fails to meet an applicable federal or state standard for asbestos projects.

11 (2) When the department believes that a violation of this part, a rule adopted under this part, or a
12 permit or order issued under this part has occurred, it may serve written notice of the violation personally or by
13 certified mail on the alleged violator or the violator's agent. The notice must specify the provision of this part or
14 the rule, permit, or order alleged to be violated and the facts alleged to constitute a violation. The notice may
15 include an order to take necessary corrective action within a reasonable period of time stated in the order, an
16 order to pay an administrative civil penalty, or both. An order becomes final unless, within 30 days after the
17 order is received, the person that has been named requests, in writing, a hearing before the ~~board~~ department.

18 (3) On receipt of a hearing request, the ~~board~~ department shall schedule a hearing. The contested
19 case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to any hearing
20 conducted under this section. If, after a hearing, the ~~board~~ department finds that a violation has not occurred or
21 is not occurring, it shall rescind the order.

22 (4) (a) An action initiated under this section may include an administrative civil penalty of not more
23 than \$10,000 for each day of each violation, not to exceed a total of \$80,000. Any order issued by the
24 department under this section requiring payment of an administrative civil penalty must specify the basis for the
25 penalty assessment.

26 (b) A penalty may not be assessed under this section for any day of violation that occurred more than
27 3 years prior to the department issuing the order requiring payment of the penalty.

28 (c) In determining the amount of a penalty assessed to a person under this section, the department

1 shall consider the penalty factors in 75-1-1001.

2 (5) In addition to or instead of issuing an order under subsection (2), the department may:

3 (a) require the alleged violator to appear before the ~~board~~ department for a hearing at a time and
4 place specified in the notice of hearing to answer the charges complained of; or

5 (b) initiate action under 75-2-514."

6

7 **Section 44.** Section 75-5-103, MCA, is amended to read:

8 **"75-5-103. (Temporary) Definitions.** Unless the context requires otherwise, in this chapter, the
9 following definitions apply:

10 (1) "Associated supporting infrastructure" means:

11 (a) electric transmission and distribution facilities;

12 (b) pipeline facilities;

13 (c) aboveground ponds and reservoirs and underground storage reservoirs;

14 (d) rail transportation;

15 (e) aqueducts and diversion dams;

16 (f) devices or equipment associated with the delivery of an energy form or product produced at an
17 energy development project; or

18 (g) other supporting infrastructure, as defined by ~~board~~ department rule, that is necessary for an
19 energy development project.

20 (2) (a) "Base numeric nutrient standards" means numeric water quality criteria for nutrients in surface
21 water that are adopted to protect the designated uses of a surface water body.

22 (b) The term does not include numeric water quality standards for nitrate, nitrate plus nitrite, or nitrite
23 that are adopted to protect human health.

24 ~~(3) "Board" means the board of environmental review provided for in 2-15-3502.~~

25 ~~(4)~~(3) "Contamination" means impairment of the quality of state waters by sewage, industrial wastes,
26 or other wastes, creating a hazard to human health.

27 ~~(5)~~(4) "Council" means the water pollution control advisory council provided for in 2-15-2107.

28 ~~(6)~~(5) (a) "Currently available data" means data that is readily available to the department at the time

1 a decision is made, including information supporting its previous lists of water bodies that are threatened or
2 impaired.

3 (b) The term does not mean new data to be obtained as a result of department efforts.

4 ~~(7)~~(6) "Degradation" means a change in water quality that lowers the quality of high-quality waters for
5 a parameter. The term does not include those changes in water quality determined to be nonsignificant
6 pursuant to 75-5-301(5)(c).

7 ~~(8)~~(7) "Department" means the department of environmental quality provided for in 2-15-3501.

8 ~~(9)~~(8) "Disposal system" means a system for disposing of sewage, industrial, or other wastes and
9 includes sewage systems and treatment works.

10 ~~(10)~~(9) "Effluent standard" means a restriction or prohibition on quantities, rates, and concentrations of
11 chemical, physical, biological, and other constituents that are discharged into state waters.

12 ~~(11)~~(10) (a) "Energy development project" means each plant, unit, or other development and
13 associated developments, including any associated supporting infrastructure, designed for or capable of:

14 (i) generating electricity;

15 (ii) producing gas derived from coal;

16 (iii) producing liquid hydrocarbon products;

17 (iv) refining crude oil or natural gas;

18 (v) producing alcohol to be blended for ethanol-blended gasoline and that are eligible for a tax
19 incentive pursuant to Title 15, chapter 70, part 5;

20 (vi) producing biodiesel and that are eligible for a tax incentive for the production of biodiesel pursuant
21 to 15-32-701; or

22 (vii) transmitting electricity through an electric transmission line with a design capacity of equal to or
23 greater than 50 kilovolts.

24 (b) The term does not include a nuclear facility as defined in 75-20-1202.

25 ~~(12)~~ (11) "Existing uses" means those uses actually attained in state waters on or after July 1, 1971,
26 whether or not those uses are included in the water quality standards.

27 ~~(13)~~(12) "High-quality waters" means all state waters, except:

28 (a) ground water classified as of January 1, 1995, within the "III" or "IV" classifications established by

1 the ~~board's~~ department's classification rules; and

2 (b) surface waters that:

3 (i) are not capable of supporting any one of the designated uses for their classification; or

4 (ii) have zero flow or surface expression for more than 270 days during most years.

5 ~~(14)~~(13) "Impaired water body" means a water body or stream segment for which sufficient credible
6 data shows that the water body or stream segment is failing to achieve compliance with applicable water quality
7 standards.

8 ~~(15)~~(14) "Industrial waste" means a waste substance from the process of business or industry or from
9 the development of any natural resource, together with any sewage that may be present.

10 ~~(16)~~(15) "Interested person" means a person who has a real property interest, a water right, or an
11 economic interest that is or may be directly and adversely affected by the department's preliminary decision
12 regarding degradation of state waters, pursuant to 75-5-303. The term includes a person who has requested
13 authorization to degrade high-quality waters.

14 ~~(17)~~(16) "Load allocation" means the portion of a receiving water's loading capacity that is allocated to
15 one of its existing or future nonpoint sources or to natural background sources.

16 ~~(18)~~(17) "Loading capacity" means the mass of a pollutant that a water body can assimilate without a
17 violation of water quality standards. For pollutants that cannot be measured in terms of mass, it means the
18 maximum change that can occur from the best practicable condition in a surface water without causing a
19 violation of the surface water quality standards.

20 ~~(19)~~(18) "Local department of health" means the staff, including health officers, employed by a county,
21 city, city-county, or district board of health.

22 ~~(20)~~(19) "Metal parameters" includes but is not limited to aluminum, antimony, arsenic, beryllium,
23 barium, cadmium, chromium, copper, fluoride, iron, lead, manganese, mercury, nickel, selenium, silver,
24 thallium, and zinc.

25 ~~(21)~~(20) "Mixing zone" means an area established in a permit or final decision on nondegradation
26 issued by the department where water quality standards may be exceeded, subject to conditions that are
27 imposed by the department and that are consistent with the rules adopted by the ~~board~~ department.

28 ~~(22)~~(21) "Nutrient standards variance" means numeric water quality criteria for nutrients based on a

determination that base numeric nutrient standards cannot be achieved because of economic impacts or because of the limits of technology. The term includes individual, general, and alternative nutrient standards variances in accordance with 75-5-313.

~~(23)~~(22) "Nutrient work group" means an advisory work group, convened by the department, representing publicly owned and privately owned point sources of pollution, nonpoint sources of pollution, and other interested parties that will advise the department on the base numeric nutrient standards, the development of nutrient standards variances, and the implementation of those standards and variances together with associated economic impacts.

~~(24)~~(23) "Other wastes" means garbage, municipal refuse, decayed wood, sawdust, shavings, bark, lime, sand, ashes, offal, night soil, oil, grease, tar, heat, chemicals, dead animals, sediment, wrecked or discarded equipment, radioactive materials, solid waste, and all other substances that may pollute state waters.

~~(25)~~(24) "Outstanding resource waters" means:

(a) state surface waters located wholly within the boundaries of areas designated as national parks or national wilderness areas as of October 1, 1995; or

(b) other surface waters or ground waters classified by the ~~board~~department under the provisions of 75-5-316 and approved by the legislature.

~~(26)~~(25) "Owner or operator" means a person who owns, leases, operates, controls, or supervises a point source.

~~(27)~~(26) "Parameter" means a physical, biological, or chemical property of state water when a value of that property affects the quality of the state water.

~~(28)~~(27) "Person" means the state, a political subdivision of the state, institution, firm, corporation, partnership, individual, or other entity and includes persons resident in Canada.

~~(29)~~(28) "Point source" means a discernible, confined, and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, or vessel or other floating craft, from which pollutants are or may be discharged.

~~(30)~~(29) (a) "Pollution" means:

(i) contamination or other alteration of the physical, chemical, or biological properties of state waters that exceeds that permitted by Montana water quality standards, including but not limited to standards relating

1 to change in temperature, taste, color, turbidity, or odor; or

2 (ii) the discharge, seepage, drainage, infiltration, or flow of liquid, gaseous, solid, radioactive, or other
3 substance into state water that will or is likely to create a nuisance or render the waters harmful, detrimental, or
4 injurious to public health, recreation, safety, or welfare, to livestock, or to wild animals, birds, fish, or other
5 wildlife.

6 (b) The term does not include:

7 (i) a discharge, seepage, drainage, infiltration, or flow that is authorized under the pollution discharge
8 permit rules adopted by the ~~board~~department under this chapter;

9 (ii) activities conducted under this chapter that comply with the conditions imposed by the department
10 in short-term authorizations pursuant to 75-5-308;

11 (iii) contamination of ground water within the boundaries of an underground mine using in situ coal
12 gasification and operating in accordance with a permit issued under 82-4-221.

13 (c) Contamination referred to in subsection ~~(30)(b)(iii)~~(29)(b)(iii) does not require a mixing zone.

14 ~~(31)~~(30) "Sewage" means water-carried waste products from residences, public buildings, institutions,
15 or other buildings, including discharge from human beings or animals, together with ground water infiltration
16 and surface water present.

17 ~~(32)~~(31) "Sewage system" means a device for collecting or conducting sewage, industrial wastes, or
18 other wastes to an ultimate disposal point.

19 ~~(33)~~(32) "Standard of performance" means a standard adopted by the ~~board~~department for the control
20 of the discharge of pollutants that reflects the greatest degree of effluent reduction achievable through
21 application of the best available demonstrated control technology, processes, operating methods, or other
22 alternatives, including, when practicable, a standard permitting no discharge of pollutants.

23 ~~(34)~~(33) (a) "State waters" means a body of water, irrigation system, or drainage system, either
24 surface or underground.

25 (b) The term does not apply to:

26 (i) ponds or lagoons used solely for treating, transporting, or impounding pollutants; or

27 (ii) irrigation waters or land application disposal waters when the waters are used up within the
28 irrigation or land application disposal system and the waters are not returned to state waters.

~~(35)~~(34) "Sufficient credible data" means chemical, physical, or biological monitoring data, alone or in combination with narrative information, that supports a finding as to whether a water body is achieving compliance with applicable water quality standards.

~~(36)~~(35) "Threatened water body" means a water body or stream segment for which sufficient credible data and calculated increases in loads show that the water body or stream segment is fully supporting its designated uses but threatened for a particular designated use because of:

- (a) proposed sources that are not subject to pollution prevention or control actions required by a discharge permit, the nondegradation provisions, or reasonable land, soil, and water conservation practices; or
- (b) documented adverse pollution trends.

~~(37)~~(36) "Total maximum daily load" or "TMDL" means the sum of the individual waste load allocations for point sources and load allocations for both nonpoint sources and natural background sources established at a level necessary to achieve compliance with applicable surface water quality standards.

~~(38)~~(37) "Treatment works" means works, including sewage lagoons, installed for treating or holding sewage, industrial wastes, or other wastes.

~~(39)~~(38) "Waste load allocation" means the portion of a receiving water's loading capacity that is allocated to one of its existing or future point sources.

~~(40)~~(39) "Water quality protection practices" means those activities, prohibitions, maintenance procedures, or other management practices applied to point and nonpoint sources designed to protect, maintain, and improve the quality of state waters. Water quality protection practices include but are not limited to treatment requirements, standards of performance, effluent standards, and operating procedures and practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from material storage.

~~(41)~~(40) "Water well" means an excavation that is drilled, cored, bored, washed, driven, dug, jetted, or otherwise constructed and intended for the location, diversion, artificial recharge, or acquisition of ground water.

~~(42)~~(41) "Watershed advisory group" means a group of individuals who wish to participate in an advisory capacity in revising and reprioritizing the list of water bodies developed under 75-5-702 and in the development of TMDLs under 75-5-703, including those groups or individuals requested by the department to participate in an advisory capacity as provided in 75-5-704.

75-5-103. (Effective on occurrence of contingency) Definitions. Unless the context requires

1 otherwise, in this chapter, the following definitions apply:

2 (1) "Associated supporting infrastructure" means:

3 (a) electric transmission and distribution facilities;

4 (b) pipeline facilities;

5 (c) aboveground ponds and reservoirs and underground storage reservoirs;

6 (d) rail transportation;

7 (e) aqueducts and diversion dams;

8 (f) devices or equipment associated with the delivery of an energy form or product produced at an
9 energy development project; or

10 (g) other supporting infrastructure, as defined by ~~board~~ department rule, that is necessary for an
11 energy development project.

12 (2) (a) "Base numeric nutrient standards" means numeric water quality criteria for nutrients in surface
13 water that are adopted to protect the designated uses of a surface water body.

14 (b) The term does not include numeric water quality standards for nitrate, nitrate plus nitrite, or nitrite
15 that are adopted to protect human health.

16 ~~(3) "Board" means the board of environmental review provided for in 2-15-3502.~~

17 ~~(4)~~(3) "Contamination" means impairment of the quality of state waters by sewage, industrial wastes,
18 or other wastes, creating a hazard to human health.

19 ~~(5)~~(4) "Council" means the water pollution control advisory council provided for in 2-15-2107.

20 ~~(6)~~(5) (a) "Currently available data" means data that is readily available to the department at the time
21 a decision is made, including information supporting its previous lists of water bodies that are threatened or
22 impaired.

23 (b) The term does not mean new data to be obtained as a result of department efforts.

24 ~~(7)~~(6) "Degradation" means a change in water quality that lowers the quality of high-quality waters for
25 a parameter. The term does not include those changes in water quality determined to be nonsignificant
26 pursuant to 75-5-301(5)(c).

27 ~~(8)~~(7) "Department" means the department of environmental quality provided for in 2-15-3501.

28 ~~(9)~~(8) "Disposal system" means a system for disposing of sewage, industrial, or other wastes and

1 includes sewage systems and treatment works.

2 ~~(10)~~(9) "Effluent standard" means a restriction or prohibition on quantities, rates, and concentrations of
3 chemical, physical, biological, and other constituents that are discharged into state waters.

4 ~~(11)~~(10) (a) "Energy development project" means each plant, unit, or other development and
5 associated developments, including any associated supporting infrastructure, designed for or capable of:

6 (i) generating electricity;

7 (ii) producing gas derived from coal;

8 (iii) producing liquid hydrocarbon products;

9 (iv) refining crude oil or natural gas;

10 (v) producing alcohol to be blended for ethanol-blended gasoline and that are eligible for a tax
11 incentive pursuant to Title 15, chapter 70, part 5;

12 (vi) producing biodiesel and that are eligible for a tax incentive for the production of biodiesel pursuant
13 to 15-32-701; or

14 (vii) transmitting electricity through an electric transmission line with a design capacity of equal to or
15 greater than 50 kilovolts.

16 (b) The term does not include a nuclear facility as defined in 75-20-1202.

17 ~~(12)~~(11) "Existing uses" means those uses actually attained in state waters on or after July 1, 1971,
18 whether or not those uses are included in the water quality standards.

19 ~~(13)~~(12) "High-quality waters" means all state waters, except:

20 (a) ground water classified as of January 1, 1995, within the "III" or "IV" classifications established by
21 the ~~board's~~ department's classification rules; and

22 (b) surface waters that:

23 (i) are not capable of supporting any one of the designated uses for their classification; or

24 (ii) have zero flow or surface expression for more than 270 days during most years.

25 ~~(14)~~(13) "Impaired water body" means a water body or stream segment for which sufficient credible
26 data shows that the water body or stream segment is failing to achieve compliance with applicable water quality
27 standards.

28 ~~(15)~~(14) "Industrial waste" means a waste substance from the process of business or industry or from

1 the development of any natural resource, together with any sewage that may be present.

2 ~~(16)~~(15) "Interested person" means a person who has a real property interest, a water right, or an
3 economic interest that is or may be directly and adversely affected by the department's preliminary decision
4 regarding degradation of state waters, pursuant to 75-5-303. The term includes a person who has requested
5 authorization to degrade high-quality waters.

6 ~~(17)~~(16) "Load allocation" means the portion of a receiving water's loading capacity that is allocated to
7 one of its existing or future nonpoint sources or to natural background sources.

8 ~~(18)~~(17) "Loading capacity" means the mass of a pollutant that a water body can assimilate without a
9 violation of water quality standards. For pollutants that cannot be measured in terms of mass, it means the
10 maximum change that can occur from the best practicable condition in a surface water without causing a
11 violation of the surface water quality standards.

12 ~~(19)~~(18) "Local department of health" means the staff, including health officers, employed by a county,
13 city, city-county, or district board of health.

14 ~~(20)~~(19) "Metal parameters" includes but is not limited to aluminum, antimony, arsenic, beryllium,
15 barium, cadmium, chromium, copper, fluoride, iron, lead, manganese, mercury, nickel, selenium, silver,
16 thallium, and zinc.

17 ~~(21)~~(20) "Mixing zone" means an area established in a permit or final decision on nondegradation
18 issued by the department where water quality standards may be exceeded, subject to conditions that are
19 imposed by the department and that are consistent with the rules adopted by the ~~board~~ department.

20 ~~(22)~~(21) "Nutrient standards variance" means numeric water quality criteria for nutrients based on a
21 determination that base numeric nutrient standards cannot be achieved because of economic impacts or
22 because of the limits of technology. The term includes individual, general, and alternative nutrient standards
23 variances in accordance with 75-5-313.

24 ~~(23)~~(22) "Nutrient work group" means an advisory work group, convened by the department,
25 representing publicly owned and privately owned point sources of pollution, nonpoint sources of pollution, and
26 other interested parties that will advise the department on the base numeric nutrient standards, the
27 development of nutrient standards variances, and the implementation of those standards and variances
28 together with associated economic impacts.

(24)(23) "Other wastes" means garbage, municipal refuse, decayed wood, sawdust, shavings, bark, lime, sand, ashes, offal, night soil, oil, grease, tar, heat, chemicals, dead animals, sediment, wrecked or discarded equipment, radioactive materials, solid waste, and all other substances that may pollute state waters.

(25)(24) "Outstanding resource waters" means:

(a) state surface waters located wholly within the boundaries of areas designated as national parks or national wilderness areas as of October 1, 1995; or

(b) other surface waters or ground waters classified by the ~~board~~ department under the provisions of 75-5-316 and approved by the legislature.

(26)(25) "Owner or operator" means a person who owns, leases, operates, controls, or supervises a point source.

(27)(26) "Parameter" means a physical, biological, or chemical property of state water when a value of that property affects the quality of the state water.

(28)(27) "Person" means the state, a political subdivision of the state, institution, firm, corporation, partnership, individual, or other entity and includes persons resident in Canada.

(29)(28) "Point source" means a discernible, confined, and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, or vessel or other floating craft, from which pollutants are or may be discharged.

(30)(29) (a) "Pollution" means:

(i) contamination or other alteration of the physical, chemical, or biological properties of state waters that exceeds that permitted by Montana water quality standards, including but not limited to standards relating to change in temperature, taste, color, turbidity, or odor; or

(ii) the discharge, seepage, drainage, infiltration, or flow of liquid, gaseous, solid, radioactive, or other substance into state water that will or is likely to create a nuisance or render the waters harmful, detrimental, or injurious to public health, recreation, safety, or welfare, to livestock, or to wild animals, birds, fish, or other wildlife.

(b) The term does not include:

(i) a discharge, seepage, drainage, infiltration, or flow that is authorized under the pollution discharge permit rules adopted by the ~~board~~ department under this chapter;

(ii) activities conducted under this chapter that comply with the conditions imposed by the department in short-term authorizations pursuant to 75-5-308;

(iii) contamination of ground water within the boundaries of a geologic storage reservoir, as defined in 82-11-101, by a carbon dioxide injection well in accordance with a permit issued pursuant to Title 82, chapter 11, part 1;

(iv) contamination of ground water within the boundaries of an underground mine using in situ coal gasification and operating in accordance with a permit issued under 82-4-221;

(c) Contamination referred to in subsections ~~(30)(b)(iii) and (30)(b)(iv)~~ (29)(b)(iii) and (29)(b)(iv) does not require a mixing zone.

~~(31)~~(30) "Sewage" means water-carried waste products from residences, public buildings, institutions, or other buildings, including discharge from human beings or animals, together with ground water infiltration and surface water present.

~~(32)~~(31) "Sewage system" means a device for collecting or conducting sewage, industrial wastes, or other wastes to an ultimate disposal point.

~~(33)~~(32) "Standard of performance" means a standard adopted by the ~~board~~ department for the control of the discharge of pollutants that reflects the greatest degree of effluent reduction achievable through application of the best available demonstrated control technology, processes, operating methods, or other alternatives, including, when practicable, a standard permitting no discharge of pollutants.

~~(34)~~(33) (a) "State waters" means a body of water, irrigation system, or drainage system, either surface or underground.

(b) The term does not apply to:

(i) ponds or lagoons used solely for treating, transporting, or impounding pollutants; or

(ii) irrigation waters or land application disposal waters when the waters are used up within the irrigation or land application disposal system and the waters are not returned to state waters.

~~(35)~~(34) "Sufficient credible data" means chemical, physical, or biological monitoring data, alone or in combination with narrative information, that supports a finding as to whether a water body is achieving compliance with applicable water quality standards.

~~(36)~~(35) "Threatened water body" means a water body or stream segment for which sufficient credible

1 data and calculated increases in loads show that the water body or stream segment is fully supporting its
2 designated uses but threatened for a particular designated use because of:

- 3 (a) proposed sources that are not subject to pollution prevention or control actions required by a
4 discharge permit, the nondegradation provisions, or reasonable land, soil, and water conservation practices; or
5 (b) documented adverse pollution trends.

6 ~~(37)~~(36) "Total maximum daily load" or "TMDL" means the sum of the individual waste load allocations
7 for point sources and load allocations for both nonpoint sources and natural background sources established at
8 a level necessary to achieve compliance with applicable surface water quality standards.

9 ~~(38)~~(37) "Treatment works" means works, including sewage lagoons, installed for treating or holding
10 sewage, industrial wastes, or other wastes.

11 ~~(39)~~(38) "Waste load allocation" means the portion of a receiving water's loading capacity that is
12 allocated to one of its existing or future point sources.

13 ~~(40)~~(39) "Water quality protection practices" means those activities, prohibitions, maintenance
14 procedures, or other management practices applied to point and nonpoint sources designed to protect,
15 maintain, and improve the quality of state waters. Water quality protection practices include but are not limited
16 to treatment requirements, standards of performance, effluent standards, and operating procedures and
17 practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from material storage.

18 ~~(41)~~(40) "Water well" means an excavation that is drilled, cored, bored, washed, driven, dug, jetted, or
19 otherwise constructed and intended for the location, diversion, artificial recharge, or acquisition of ground water.

20 ~~(42)~~(41) "Watershed advisory group" means a group of individuals who wish to participate in an
21 advisory capacity in revising and reprioritizing the list of water bodies developed under 75-5-702 and in the
22 development of TMDLs under 75-5-703, including those groups or individuals requested by the department to
23 participate in an advisory capacity as provided in 75-5-704."

24
25 **Section 45.** Section 75-5-105, MCA, is amended to read:

26 **"75-5-105. Confidentiality of records.** Except as provided in 80-15-108, any information concerning
27 sources of pollution that is furnished to the ~~board or~~ department or that is obtained by ~~either of them~~ the
28 department is a matter of public record and open to public use. However, any information unique to the owner

1 or operator of a source of pollution that would, if disclosed, reveal methods or processes entitled to protection
2 as trade secrets must be maintained as confidential if ~~so~~ determined by a court of competent jurisdiction. The
3 owner or operator shall file a declaratory judgment action to establish the existence of a trade secret if the
4 owner or operator wishes the information to remain confidential. The department must be served in the action
5 and may intervene as a party. Any information not intended to be public when submitted to the ~~board or~~
6 department must be submitted in writing and clearly marked as confidential. Except as provided in 75-5-314,
7 the data describing physical and chemical characteristics of a waste discharged to state waters may not be
8 considered confidential. The ~~board~~ department may use any information in compiling or publishing analyses or
9 summaries relating to water pollution if the analyses or summaries do not identify any owner or operator of a
10 source of pollution or reveal any information that is otherwise made confidential by this section."
11

12 **Section 46.** Section 75-5-106, MCA, is amended to read:

13 **"75-5-106. Interagency cooperation -- enforcement authorization.** (1) The council,~~board~~, and the
14 department may require the use of records of all state agencies and may seek the assistance of the agencies.
15 When the department's review of a permit application submitted under another chapter or title is required or
16 requested, the department shall coordinate the review under this chapter with the review conducted by the
17 agency or unit under the other chapter, following the time schedule for that review. State, county, and municipal
18 officers and employees, including sanitarians and other employees of local departments of health, shall
19 cooperate with the council,~~board~~, and the department in furthering the purposes of this chapter, so far as is
20 practicable and consistent with their other duties.

21 (2) The department may authorize a local water quality district established according to the provisions
22 of Title 7, chapter 13, part 45, to enforce the provisions of this chapter and rules adopted under this chapter on
23 a case-by-case basis. If a local water quality district requests the authorization, the local water quality district
24 shall present appropriate documentation to the department that a person is violating permit requirements
25 established by the department or may be causing pollution, as defined in 75-5-103, of state waters or placing or
26 causing to be placed wastes in a location where they are likely to cause pollution of state waters. The ~~board~~
27 department may adopt rules regarding the granting of enforcement authority to local water quality districts."
28

1 **Section 47.** Section 75-5-201, MCA, is amended to read:

2 **"75-5-201. ~~Board rules~~Rules authorized.** (1) (a) The ~~board~~department shall, except as provided in
3 75-5-411 and subject to the provisions of 75-5-203, adopt rules for the administration of this chapter.

4 (b) The ~~board~~department shall adopt rules that describe the location and the times of the year when
5 suction dredging is permissible. These rules may be adopted only after consultation with the local conservation
6 districts in the areas subject to the rule.

7 (2) The ~~board's~~department's rules may include a fee schedule or system for assessment of
8 administrative penalties as provided under 75-5-611."

9
10 **Section 48.** Section 75-5-202, MCA, is amended to read:

11 **"75-5-202. ~~Board hearings~~Hearings.** The ~~board~~department shall hold hearings necessary for the
12 proper administration of this chapter ~~or, in the case of permit issuance hearings, delegate this function to the~~
13 ~~department."~~

14
15 **Section 49.** Section 75-5-203, MCA, is amended to read:

16 **"75-5-203. State regulations no more stringent than federal regulations or guidelines.** (1) Except
17 as provided in subsections (2) through (5) or unless required by state law, the ~~board~~department may not adopt
18 a rule to implement 75-5-301, 75-5-302, 75-5-303, or 75-5-310 that is more stringent than the comparable
19 federal regulations or guidelines that address the same circumstances. The ~~board~~department may incorporate
20 by reference comparable federal regulations or guidelines.

21 (2) The ~~board~~department may adopt a rule to implement this chapter that is more stringent than
22 comparable federal regulations or guidelines only if the ~~board~~department makes a written finding after a public
23 hearing and public comment and based on evidence in the record that:

24 (a) the proposed state standard or requirement protects public health or the environment of the state;
25 and

26 (b) the state standard or requirement to be imposed can mitigate harm to the public health or
27 environment and is achievable under current technology.

28 (3) The written finding must reference pertinent, ascertainable, and peer-reviewed scientific studies

1 contained in the record that forms the basis for the ~~board's~~ department's conclusion. The written finding must
2 also include information from the hearing record regarding the costs to the regulated community that are
3 directly attributable to the proposed state standard or requirement.

4 (4) (a) A person affected by a rule ~~of the board that~~ that the person believes to be more stringent
5 than comparable federal regulations or guidelines may petition the ~~board~~ department to review the rule. If the
6 ~~board~~ department determines that the rule is more stringent than comparable federal regulations or guidelines,
7 the ~~board~~ department shall comply with this section by either revising the rule to conform to the federal
8 regulations or guidelines or by making the written finding, as provided under subsection (2), within a reasonable
9 period of time, not to exceed 8 months after receiving the petition. A petition under this section does not relieve
10 the petitioner of the duty to comply with the challenged rule. The ~~board~~ department may charge a petition filing
11 fee in an amount not to exceed \$250.

12 (b) A person may also petition the ~~board~~ department for a rule review under subsection (4)(a) if the
13 ~~board~~ department adopts a rule in an area in which no federal regulations or guidelines existed and the federal
14 government subsequently establishes comparable regulations or guidelines that are less stringent than the
15 previously adopted ~~board~~ department rule.

16 (5) This section does not apply to a rule adopted under the emergency rulemaking provisions of 2-4-
17 303(1)."

18
19 **Section 50.** Section 75-5-222, MCA, is amended to read:

20 **"75-5-222. State regulation for natural conditions.** (1) The department may not apply a standard to
21 a water body for water quality that is more stringent than the nonanthropogenic condition of the water body. For
22 the parameters for which the applicable standards are more stringent than the nonanthropogenic condition, the
23 standard is the nonanthropogenic condition of the parameter in the water body. The department shall
24 implement the standard in a manner that provides for the water quality standards for downstream waters to be
25 attained and maintained.

26 (2) (a) For water bodies where the standard is more stringent than the condition of the water body but
27 subsection (1) is not applicable, the ~~board~~ department shall adopt rules consistent with comparable federal
28 rules and guidelines providing criteria and procedures for the department to issue variances from standards if:

(i) the condition cannot reasonably be expected to be remediated during the permit term for which the application for variance has been received; and

(ii) the discharge to which the variance applies would not materially contribute to the condition.

(b) A variance issued pursuant to subsection (2)(a) must be reviewed every 5 years and may be modified or terminated as a result of the review."

Section 51. Section 75-5-301, MCA, is amended to read:

"75-5-301. Classification and standards for state waters. Consistent with the provisions of 80-15-201 and this chapter, the ~~board~~department shall:

(1) establish the classification of all state waters in accordance with their present and future most beneficial uses, creating an appropriate classification for streams that, due to sporadic flow, do not support an aquatic ecosystem that includes salmonid or nonsalmonid fish;

(2) formulate and adopt standards of water quality, giving consideration to the economics of waste treatment and prevention. When rules are adopted regarding temporary standards, they must conform with the requirements of 75-5-312. Standards adopted by the ~~board~~department must meet the following requirements:

(a) for carcinogens, the water quality standard for protection of human health must be the value associated with an excess lifetime cancer risk level, assuming continuous lifetime exposure, not to exceed 1×10^{-3} in the case of arsenic and 1×10^{-5} for other carcinogens. However, if a standard established at a risk level of 1×10^{-3} for arsenic or 1×10^{-5} for other carcinogens violates the maximum contaminant level obtained from 40 CFR, part 141, then the maximum contaminant level must be adopted as the standard for that carcinogen.

(b) standards for the protection of aquatic life do not apply to ground water.

(3) review, from time to time at intervals of not more than 3 years and, to the extent permitted by this chapter, revise established classifications of waters and adopted standards of water quality;

(4) adopt rules governing the granting of mixing zones, requiring that mixing zones granted by the department be specifically identified and requiring that mixing zones have:

(a) the smallest practicable size;

(b) a minimum practicable effect on water uses; and

(c) definable boundaries;

- 1 (5) adopt rules implementing the nondegradation policy established in 75-5-303, including but not
2 limited to rules that:
- 3 (a) provide a procedure for department review and authorization of degradation;
- 4 (b) establish criteria for the following:
- 5 (i) determining important economic or social development; and
- 6 (ii) weighing the social and economic importance to the public of allowing the proposed project against
7 the cost to society associated with a loss of water quality;
- 8 (c) establish criteria for determining whether a proposed activity or class of activities, in addition to
9 those activities identified in 75-5-317, will result in nonsignificant changes in water quality for any parameter in
10 order that those activities are not required to undergo review under 75-5-303(3). These criteria must be
11 established in a manner that generally:
- 12 (i) equates significance with the potential for harm to human health, a beneficial use, or the
13 environment;
- 14 (ii) considers both the quantity and the strength of the pollutant;
- 15 (iii) considers the length of time the degradation will occur;
- 16 (iv) considers the character of the pollutant so that greater significance is associated with carcinogens
17 and toxins that bioaccumulate or biomagnify and lesser significance is associated with substances that are less
18 harmful or less persistent.
- 19 (d) provide that changes of nitrate as nitrogen in ground water are nonsignificant if the discharge will
20 not cause degradation of surface water and the predicted concentration of nitrate as nitrogen at the boundary of
21 the ground water mixing zone does not exceed:
- 22 (i) 7.5 milligrams per liter from sources other than sewage;
- 23 (ii) 5.0 milligrams per liter from sewage discharged from a system that does not use level two
24 treatment in an area where the ground water nitrate as nitrogen is 5.0 milligrams per liter or less;
- 25 (iii) 7.5 milligrams per liter from sewage discharged from a system using level two treatment, which
26 must be defined in the rules; or
- 27 (iv) 7.5 milligrams per liter from sewage discharged from a system in areas where the ground water
28 nitrate as nitrogen level exceeds 5.0 milligrams per liter primarily from sources other than human waste.

(6) to the extent practicable, ensure that the rules adopted under subsection (5) establish objective and quantifiable criteria for various parameters. These criteria must, to the extent practicable, constitute guidelines for granting or denying applications for authorization to degrade high-quality waters under the policy established in 75-5-303(2) and (3).

(7) adopt rules to implement this section."

Section 52. Section 75-5-302, MCA, is amended to read:

"75-5-302. Revising classifications in accordance with existing, present, and future most beneficial uses of water bodies. When the ~~board or~~ department is presented with facts indicating that a body of water is not properly classified in accordance with its existing, present, and future most beneficial uses, the department shall, within 90 days, evaluate the facts and ~~advise the board whether the water body is not properly classified.~~ If the ~~board~~ department determines that the water body is not properly classified, the ~~board~~ department shall initiate rulemaking to properly classify the water body in accordance with its existing, present, and future most beneficial uses. ~~Board action~~ Action pursuant to this section is subject to 75-5-307."

Section 53. Section 75-5-303, MCA, is amended to read:

"75-5-303. Nondegradation policy. (1) Existing uses of state waters and the level of water quality necessary to protect those uses must be maintained and protected.

(2) Unless authorized by the department under subsection (3) or exempted from review under 75-5-317, the quality of high-quality waters must be maintained.

(3) The department may not authorize degradation of high-quality waters unless it has been affirmatively demonstrated by a preponderance of evidence to the department that:

(a) degradation is necessary because there are no economically, environmentally, and technologically feasible modifications to the proposed project that would result in no degradation;

(b) the proposed project will result in important economic or social development and that the benefit of the development exceeds the costs to society of allowing degradation of high-quality waters;

(c) existing and anticipated use of state waters will be fully protected; and

(d) the least degrading water quality protection practices determined by the department to be

1 economically, environmentally, and technologically feasible will be fully implemented by the applicant prior to
2 and during the proposed activity.

3 (4) The department shall issue a preliminary decision either denying or authorizing degradation and
4 shall provide public notice and a 30-day comment period prior to issuing a final decision. The department's
5 preliminary and final decisions must include:

6 (a) a statement of the basis for the decision; and

7 (b) a detailed description of all conditions applied to any authorization to degrade state waters,
8 including, when applicable, monitoring requirements, required water protection practices, reporting
9 requirements, effluent limits, designation of the mixing zones, the limits of degradation authorized, and methods
10 of determining compliance with the authorization for degradation.

11 (5) An interested person wishing to challenge a final department decision may request a hearing
12 before the ~~board~~ department within 30 days of the final department decision. The contested case procedures of
13 Title 2, chapter 4, part 6, apply to a hearing under this section.

14 (6) Periodically, but not more often than every 5 years, the department may review authorizations to
15 degrade state waters. Following the review, the department may, after timely notice and opportunity for hearing,
16 modify the authorization if the department determines that an economically, environmentally, and
17 technologically feasible modification to the development exists. The decision by the department to modify an
18 authorization may be appealed to the ~~board~~ department.

19 (7) The ~~board~~ department may not issue an authorization to degrade state waters that are classified
20 as outstanding resource waters.

21 (8) The ~~board~~ department shall adopt rules to implement this section."
22

23 **Section 54.** Section 75-5-304, MCA, is amended to read:

24 **"75-5-304. Adoption of standards -- pretreatment, effluent, performance.** (1) The ~~board~~
25 department shall:

26 (a) adopt pretreatment standards for wastewater discharged into a municipal disposal system;

27 (b) adopt effluent standards as defined in 75-5-103;

28 (c) adopt toxic effluent standards and prohibitions;

(d) establish standards of performance for new point source discharges; and

(e) adopt rules necessary to ensure the primacy of the department to regulate cooling water intake structures under 33 U.S.C. 1326(b).

(2) In taking action under subsection (1), the ~~board~~-department shall ensure that the standards are cost-effective and economically, environmentally, and technologically feasible."

Section 55. Section 75-5-305, MCA, is amended to read:

"75-5-305. Adoption of requirements for treatment of wastes -- variance procedure -- appeals.

(1) The ~~board~~-department may establish minimum requirements for the treatment of wastes. For cases in which the federal government has adopted technology-based treatment requirements for a particular industry or activity in 40 CFR, chapter I, subchapter N, the ~~board~~-department shall adopt those requirements by reference. To the extent that the federal government has not adopted minimum treatment requirements for a particular industry or activity, the ~~board~~-department may do so, through rulemaking, for parameters likely to affect beneficial uses, ensuring that the requirements are cost-effective and economically, environmentally, and technologically feasible. Except for the technology-based treatment requirements set forth in 40 CFR, chapter I, subchapter N, minimum treatment may not be required to address the discharge of a parameter when the discharge is considered nonsignificant under rules adopted pursuant to 75-5-301.

(2) (a) The ~~board~~-department shall establish minimum requirements for the control and disposal of sewage from private and public buildings, including standards and procedures for variances from the requirements.

(b) For gray water reuse systems, the ~~board~~-department shall establish rules that:

(i) allow the diversion of gray water from wastewater treatment systems and limit the amount of gray water flow allowed by permit;

(ii) address the uses of gray water, including when and how gray water may be applied to land; and

(iii) include any other provisions that the ~~board~~-department considers necessary to ensure that gray water reuse systems comply with laws and regulations and protect public health and the environment.

(3) An applicant for a variance from minimum requirements adopted by a local board of health pursuant to 50-2-116 may appeal the local board of health's final decision to the department by submitting a

1 written request for a hearing within 30 days after the decision. The written request must describe the activity for
2 which the variance is requested, include copies of all documents submitted to the local board of health in
3 support of the variance, and specify the reasons for the appeal of the local board of health's final decision.

4 (4) The department shall conduct a hearing on the request pursuant to Title 2, chapter 4, part 6.
5 Within 30 days after the hearing, the department shall grant, conditionally grant, or deny the variance. The
6 department shall base its decision on the ~~board's~~ department's standards for a variance.

7 (5) A decision of the department pursuant to subsection (4) is appealable to district court under the
8 provisions of Title 2, chapter 4, part 7."

9
10 **Section 56.** Section 75-5-307, MCA, is amended to read:

11 **"75-5-307. Hearings required for classification, formulation of standards, and rulemaking.** (1)
12 Before streams are classified or standards established or modified or rules made, revoked, or modified, the
13 ~~board~~ department shall hold a public hearing. Notice of the hearing specifying the waters concerned and the
14 classification, standards, or modification of them and any rules proposed to be made, revoked, or modified ~~shall~~
15 must be published at least once a week for 3 consecutive weeks in a daily newspaper of general circulation in
16 the area affected. Notice ~~shall also~~ must be mailed directly to persons the ~~board~~ department believes may be
17 affected by the proposed action. The council ~~shall~~ must be given not less than 30 days prior to first publication
18 to comment on the proposed action.

19 (2) At a hearing held under this section, the ~~board~~ department shall give all interested persons
20 reasonable opportunity to submit data, views, or arguments, orally or in writing. The ~~board~~ department may
21 make rules for the orderly conduct of the hearing but need not require compliance with the rules of evidence or
22 procedure applicable to hearings held under 75-5-611."

23
24 **Section 57.** Section 75-5-308, MCA, is amended to read:

25 **"75-5-308. Short-term water authorizations -- water quality standards.** (1) Because these
26 activities promote the public interest, the department may, if necessary, authorize short-term exemptions from
27 the water quality standards for the following activities:

28 (a) emergency remediation activities that have been approved, authorized, or required by the

1 department; and

2 (b) application of a pesticide that is registered by the United States environmental protection agency
3 pursuant to 7 U.S.C. 136(a) when it is used to control nuisance aquatic organisms or to eliminate undesirable
4 and nonnative aquatic species.

5 (2) An authorization must include conditions that minimize, to the extent practicable, the magnitude of
6 any change in the concentration of the parameters affected by the activity and the length of time during which
7 any change may occur. The authorization must also include conditions that prevent significant risk to public
8 health and that ensure that existing and designated uses of state water are protected and maintained upon
9 completion of the activity. Authorizations issued under this section may include conditions that require water
10 quality or quantity monitoring and reporting. In the performance of its responsibilities under this section, the
11 department may negotiate operating agreements with other departments of state government that are intended
12 to minimize duplication in review of activities eligible for authorizations under this section.

13 (3) An authorization to use a pesticide does not relieve a person from the duty to comply with Title 80,
14 chapters 8 and 15. The department may not authorize an exemption from water quality standards for an activity
15 that requires a discharge permit under rules adopted by the board pursuant to 75-5-401."

16

17 **Section 58.** Section 75-5-310, MCA, is amended to read:

18 **"75-5-310. Site-specific standards of water quality for aquatic life.** (1) Notwithstanding any other
19 provisions of this chapter and except as provided in subsection (2), the ~~board~~ department, upon application by
20 a permit applicant, permittee, or person potentially liable under any state or federal environmental remediation
21 statute, shall adopt site-specific standards of water quality for aquatic life, both acute and chronic, as the
22 standards of water quality required under 75-5-301(2) and (3). The site-specific standards of water quality must
23 be developed in accordance with the procedures set forth in draft or final federal regulations, guidelines, or
24 criteria.

25 (2) If the department, based upon its review of an application submitted under subsection (1) and
26 sound scientific, technical, and available site-specific evidence, determines that the development of site-specific
27 criteria in accordance with draft or final federal regulations, guidelines, or criteria would not be protective of
28 beneficial uses, the department, within 90 days of the submission of an application under subsection (1), shall

1 notify the applicant in writing of its determination and of all additional procedures that the applicant is required
2 to comply with in the development of site-specific standards of water quality under this section. If there is a
3 dispute between the department and the applicant as to the additional procedures, the ~~board-department~~ shall,
4 on the request of the department or the applicant, hear and determine the dispute. The ~~board's-department's~~
5 decision must be based on sound scientific, technical, and available site-specific evidence."
6

7 **Section 59.** Section 75-5-311, MCA, is amended to read:

8 **"75-5-311. Local water quality districts -- ~~board-department~~ approval -- local water quality**
9 **programs.** (1) A county that establishes a local water quality district according to the procedures specified in
10 Title 7, chapter 13, part 45, shall, in consultation with the department, undertake planning and information-
11 gathering activities necessary to develop a proposed local water quality program.

12 (2) A county may implement a local water quality program in a local water quality district if the
13 program is approved by the ~~board-department~~ after a hearing conducted under 75-5-202.

14 (3) In approving a local water quality program, the ~~board-department~~ shall determine that the program
15 is consistent with the purposes and requirements of Title 75, chapter 5, and that the program will be effective in
16 protecting, preserving, and improving the quality of surface water and ground water, considering the
17 administrative organization, staff, and financial and other resources available to implement the program.

18 (4) Subject to the ~~board's-department~~ approval, the commissioners and the governing bodies of cities
19 and towns that participate in a local water quality district may adopt local ordinances to regulate the following
20 specific facilities and sources of pollution:

21 (a) onsite wastewater disposal facilities;
22 (b) storm water runoff from paved surfaces;
23 (c) service connections between buildings and publicly owned sewer mains;
24 (d) facilities that use or store halogenated and nonhalogenated solvents, including hazardous
25 substances that are referenced in 40 CFR 261.31, United States environmental protection agency hazardous
26 waste numbers F001 through F005, as amended; and

27 (e) internal combustion engine lubricants.

28 (5) (a) For the facilities and sources of pollution included in subsection (4) and consistent with the

provisions of subsection (6), the local ordinances may:

(i) be compatible with or more stringent or more extensive than the requirements imposed by 75-5-304, 75-5-305, and 75-5-401 through 75-5-404 and rules adopted under those sections to protect water quality, establish waste discharge permit requirements, and establish best management practices for substances that have the potential to pollute state waters;

(ii) provide for administrative procedures, administrative orders and actions, and civil enforcement actions that are consistent with 75-5-601 through 75-5-604, 75-5-611 through 75-5-616, 75-5-621, and 75-5-622 and rules adopted under those sections; and

(iii) provide for civil penalties not to exceed \$1,000 per violation, provided that each day of violation of a local ordinance constitutes a separate violation, and criminal penalties not to exceed \$500 per day of violation or imprisonment for not more than 30 days, or both.

(b) ~~Board~~ Department approval of an ordinance or local law that is more stringent than the comparable state law is subject to the provisions of 75-5-203.

(6) The local ordinances authorized by this section may not:

(a) duplicate the department's requirements and procedures relating to permitting of waste discharge sources and enforcement of water quality standards;

(b) regulate any facility or source of pollution to the extent that the facility or source is:

(i) required to obtain a permit or other approval from the department or federal government or is the subject of an administrative order, a consent decree, or an enforcement action pursuant to Title 75, chapter 5, part 4; Title 75, chapter 6; Title 75, chapter 10; the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9601 through 9675, as amended; or federal environmental, safety, or health statutes and regulations;

(ii) exempted from obtaining a permit or other approval from the department because the facility or source is required to obtain a permit or other approval from another state agency or is the subject of an enforcement action by another state agency; or

(iii) subject to the provisions of Title 80, chapter 8 or chapter 15.

(7) If the boundaries of a district are changed after the ~~board~~ department has approved the local water quality program for the district, the board of directors of the local water quality district shall submit a

1 program amendment to the ~~board~~ department and obtain the ~~board's~~ department approval of the program
2 amendment before implementing the local water quality program in areas that have been added to the district.

3 (8) The department shall monitor the implementation of local water quality programs to ensure that
4 the programs are adequate to protect, preserve, and improve the quality of the surface water and ground water
5 and are being administered in a manner consistent with the purposes and requirements of Title 75, chapter 5. ~~If~~
6 ~~the department finds that a local water quality program is not adequate to protect, preserve, and improve the~~
7 ~~quality of the surface water and ground water or is not being administered in a manner consistent with the~~
8 ~~purposes and requirements of Title 75, chapter 5, the department shall report to the board.~~

9 (9) If the ~~board~~ department determines that a local water quality program is inadequate to protect,
10 preserve, and improve the quality of the surface water and ground water in the local water quality district or that
11 the program is being administered in a manner inconsistent with Title 75, chapter 5, the ~~board~~ department shall
12 give notice and conduct a hearing on the matter.

13 (10) If after the hearing the ~~board~~ department determines that the program is inadequate to protect,
14 preserve, and improve the quality of the surface water and ground water in the local water quality district or that
15 it is not being administered in a manner consistent with the purposes of Title 75, chapter 5, the ~~board~~
16 department shall require that necessary corrective measures be taken within a reasonable time, not to exceed
17 60 days.

18 (11) If an ordinance adopted under this section conflicts with a requirement imposed by the
19 department's water quality program, the department's requirement supersedes the local ordinance.

20 (12) If the ~~board~~ department finds that, because of the complexity or magnitude of a particular water
21 pollution source, the control of the source is beyond the reasonable capability of a local water quality district or
22 may be more efficiently and economically performed at the state level, the ~~board may direct the department to~~
23 may assume and retain control over the source. A charge may not be assessed against the local water quality
24 district for that source. Findings made under this subsection may be based on the nature of the source involved
25 or on the source's relationship to the size of the community in which it is located."
26

27 **Section 60.** Section 75-5-312, MCA, is amended to read:

28 **"75-5-312. Temporary water quality standards.** (1) The ~~board~~ department may, ~~upon~~

1 ~~recommendation of the department~~ on its own accord or upon a petition for rulemaking, as provided in 2-4-315,
2 by a person, including a permit applicant or permittee, temporarily modify a water quality standard for a specific
3 water body or segment on a parameter-by-parameter basis in those instances in which substantive information
4 indicates that the water body or segment is not supporting its designated uses. When the ~~board~~ department
5 adopts temporary standards, the goal is to improve water quality to the point at which all the beneficial uses
6 designated for that water body or segment are supported.

7 (2) As a condition for establishing temporary water quality standards for a particular water body or
8 segment, the department or the petitioner, as applicable, shall prepare a support document and a preliminary
9 implementation plan for use by the ~~board~~ department in determining whether to adopt the proposed temporary
10 water quality standards. A person shall submit a support document and a preliminary implementation plan to
11 the department for its review at least 60 days prior to filing a petition with the ~~board~~ department requesting the
12 adoption of temporary water quality standards.

13 (3) The support document prepared by the department or the petitioner, as applicable, must describe:

- 14 (a) the chemical, biological, and physical condition of the water body or segment;
- 15 (b) the specific water quality limiting factors affecting the water body or segment;
- 16 (c) the existing water quality standards that are not being achieved;
- 17 (d) the temporary modifications to the existing water quality standards being requested;
- 18 (e) existing beneficial uses; and
- 19 (f) the designated uses considered attainable in the absence of the water quality limiting factors.

20 (4) The preliminary implementation plan prepared by the department or the petitioner, as applicable,
21 must contain:

22 (a) a description of the proposed actions that will eliminate the water quality limiting factors identified
23 in subsection (3)(b) to the extent considered achievable; and

24 (b) a schedule for implementing the proposed actions that ensures that the existing water quality
25 standards for the parameter or parameters at issue are met as soon as reasonably practicable.

26 (5) Within 30 days after the ~~board's~~ department's adoption of temporary water quality standards, the
27 department or the petitioner, as applicable, shall:

- 28 (a) modify the preliminary implementation plan and schedule to reflect the requirements and

1 timeframe adopted by the ~~board~~department for the temporary standards; and

2 (b) develop a detailed work plan describing the implementation activities that will be conducted during
3 the first field season of the temporary standards. The work plan must be approved by the director of the
4 department.

5 (6) By March 1 of each year that the temporary water quality standards are in effect, the department
6 or the petitioner, as applicable, shall submit a detailed work plan describing the implementation activities that
7 will be conducted during that season. The annual work plans must be approved by the director of the
8 department. The department shall maintain copies of the implementation plan, schedule, and annual work plans
9 and any modifications to those plans and schedule.

10 (7) Upon the ~~board's~~department's adoption of a temporary water quality standard, the department
11 shall ensure that reasonable conditions and limitations designed to achieve compliance with the implementation
12 plan are established in appropriate discharge permits.

13 (8) (a) A temporary modification of a water quality standard may not result in adverse impacts to
14 existing beneficial uses or be established for a total period longer than 20 years.

15 (b) During the period of the temporary modification, the ~~board~~department may not allow a discharge
16 that will cause overall water quality to become worse than the overall quality of the water body or segment prior
17 to the discharge.

18 (9) If a state water is designated as having temporary standards, the department shall report ~~to the~~
19 ~~board~~ at least every 3 years ~~or upon request of the board~~ regarding whether adequate efforts have been made
20 to implement the plans submitted as the basis for the temporary standards.

21 (10) The ~~board~~department shall review the temporary standards and implementation plan at least
22 every 3 years at a public hearing for which notice and an opportunity for comment have been provided. During
23 this review, the ~~board~~department shall consider the progress made in restoring water quality to a level that
24 achieves the goal of the temporary water quality standards. The ~~board~~department may terminate or modify the
25 temporary standards based on information submitted at the time of review.

26 (11) The ~~board~~department shall terminate a temporary standard for a parameter if:

27 (a) values for the modified parameter or parameters improve to conditions that support all designated
28 uses for that classification;

(b) the state water for which the temporary standard is adopted is reclassified as provided for in 75-5-302; or

(c) the plan submitted in support of the temporary water quality standard is not being implemented according to the plan's schedule or modifications to that plan or schedule made by the ~~board or~~ department.

(12) The ~~board or the~~ department may modify the implementation plan if there is convincing evidence that the plan needs modification.

(13) If a temporary standard for a parameter in a particular state water is terminated because the plan submitted in support of the temporary water quality standard is not being implemented according to the plan's schedule or modifications to that schedule made by the ~~board or~~ department, a person may request a new temporary standard by submitting both a petition for rulemaking and an implementation plan that meet the requirements of subsection (4). However, the ~~board~~ department may not adopt another temporary standard for the parameter in the state water that would cumulatively be in effect for a total period longer than 20 years for the parameter in the state water."

Section 61. Section 75-5-313, MCA, is amended to read:

"75-5-313. Nutrient standards variances -- individual, general, and alternative. (1) The department shall, on a case-by-case basis, approve the use of an individual nutrient standards variance in a discharge permit based upon adequate justification pursuant to subsection (2) that attainment of the base numeric nutrient standards is precluded due to economic impacts, limits of technology, or both.

(2) (a) The department, in consultation with the nutrient work group, shall develop guidelines for individual nutrient standards variances to ensure that the economic impacts from base numeric nutrient standards on public and private systems are equally and adequately addressed. In developing those guidelines, the department and the nutrient work group shall consider economic impacts appropriate for application within Montana, acknowledging that advanced treatment technologies for removing nutrients will result in significant and widespread economic impacts.

(b) The department shall consult with the nutrient work group prior to recommending base numeric nutrient standards ~~to the board~~ and shall continue to consult with the nutrient work group in implementing individual nutrient standards variances.

1 (3) The department shall review each application for an individual nutrient standards variance on a
2 case-by-case basis to determine if there are reasonable alternatives, such as trading, permit compliance
3 schedules, or the alternatives provided in subsections (5), (10), and (11), that preclude the need for the
4 individual nutrient standards variance.

5 (4) Individual nutrient standards variances approved by the department become effective and may be
6 incorporated into a permit only after a public hearing and adoption by the department under the rulemaking
7 procedures of Title 2, chapter 4, part 3.

8 (5) (a) Because the treatment of wastewater to base numeric nutrient standards would result in
9 substantial and widespread economic impacts on a statewide basis, a permittee who meets the requirements
10 established in subsection (5)(b) may, subject to subsection (6), apply for a general nutrient standards variance.

11 (b) The department shall approve the use of a general nutrient standards variance for permittees with
12 wastewater treatment facilities that discharge to surface water:

13 (i) in an amount greater than or equal to 1 million gallons per day of effluent if the permittee treats the
14 discharge to, at a minimum, 1 milligram total phosphorus per liter and 10 milligrams total nitrogen per liter,
15 calculated as a monthly average during the period in which the base numeric nutrient standards apply;

16 (ii) in an amount less than 1 million gallons per day of effluent if the permittee treats the discharge to,
17 at a minimum, 2 milligrams total phosphorus per liter and 15 milligrams total nitrogen per liter, calculated as a
18 monthly average during the period in which the base numeric nutrient standards apply; or

19 (iii) from lagoons that were not designed to actively remove nutrients if the permittee maintains the
20 performance of the lagoon at a level equal to the performance of the lagoon on October 1, 2011.

21 (6) (a) The monthly average concentrations for total nitrogen and total phosphorus in subsection
22 (5)(b) are the highest concentrations allowed in each category and remain in effect until May 31, 2016.

23 (b) Categories and concentrations in subsection (5)(b) must be adopted by rule by May 31, 2016.

24 (7) (a) Immediately after May 31, 2016, and every 3 years thereafter, the department, in consultation
25 with the nutrient work group, shall revisit and update the concentration levels provided in subsection (5)(b).

26 (b) If more cost-effective and efficient treatment technologies are available, the concentration levels
27 provided in subsection (5)(b) must be updated pursuant to subsection (7)(c) to reflect those changes.

28 (c) The updates become effective and may be incorporated into a permit only after a public hearing

1 and adoption by the department under the rulemaking procedures of Title 2, chapter 4, part 3.

2 (8) An individual, general, or alternative nutrient standards variance may be established for a period
3 not to exceed 20 years and must be reviewed by the department every 3 years from the date of adoption to
4 ensure that the justification for its adoption remains valid.

5 (9) (a) Permittees receiving an individual, general, or alternative nutrient standards variance shall
6 evaluate current facility operations to optimize nutrient reduction with existing infrastructure and shall analyze
7 cost-effective methods of reducing nutrient loading, including but not limited to nutrient trading without
8 substantial investment in new infrastructure.

9 (b) The department may request that a permittee provide the results of an optimization study and
10 nutrient reduction analysis to the department within 2 years of receiving an individual, general, or alternative
11 nutrient variance.

12 (10) (a) A permittee may request that the department provide an alternative nutrient standards
13 variance if the permittee demonstrates that achieving nutrient concentrations established for an individual or
14 general nutrient standards variance would result in an insignificant reduction of instream nutrient loading.

15 (b) A permittee receiving an alternative nutrient standards variance shall comply with the
16 requirements of subsections (8) and (9) and shall demonstrate that the permittee's contribution to nutrient
17 concentrations in the watershed continues to remain insignificant.

18 (11) The department shall encourage the use of alternative effluent management methods to reduce
19 instream nutrient loading, including reuse, recharge, land application, and trading.

20 (12) On or before July 1 of each year, the department, in consultation with the nutrient work group,
21 shall report to the water policy committee established in 5-5-231 by providing a summary of the status of the
22 base numeric nutrient standards, the nutrient standards variances, and the implementation of those standards
23 and variances, including estimated economic impacts.

24 (13) On or before September 1 of each year preceding the convening of a regular session of the
25 legislature, the department, in consultation with the nutrient work group, shall summarize the two most recent
26 reports provided under subsection (12) and submit to the water policy committee established in 5-5-231 this
27 final summary in accordance with 5-11-210."
28

1 **Section 62.** Section 75-5-314, MCA, is amended to read:

2 **"75-5-314. Confidentiality of base numeric standards and nutrient standards variances. (1)**

3 Except as provided in 80-15-108 and subsection (2) of this section, information concerning base numeric
4 nutrient standards or nutrient standards variances that is furnished to the ~~board or~~ department or that is
5 obtained by ~~either of them~~ the department is a matter of public record and open to public use.

6 (2) Information unique to the owner or operator of a source of a discharge related to base numeric
7 nutrient standards or nutrient standards variances that would, if disclosed, reveal methods or processes entitled
8 to protection as trade secrets as defined in 30-14-402 must be maintained as confidential if so determined by a
9 court of competent jurisdiction.

10 (3) (a) The owner or operator shall file a declaratory judgment action to establish the existence of a
11 trade secret if the owner or operator wishes the information to remain confidential.

12 (b) The department must be served in the action and may intervene as a party.

13 (c) Information not intended to be public when submitted to the ~~board or~~ department must be
14 submitted in writing and clearly marked as confidential."

15
16 **Section 63.** Section 75-5-315, MCA, is amended to read:

17 **"75-5-315. Outstanding resource waters -- statement of purpose.** (1) The legislature,
18 understanding the requirements of applicable federal law and the uniqueness of Montana's water resource,
19 recognizes that certain state waters are of such environmental, ecological, or economic value that the state
20 should, upon a showing of necessity, prohibit, to the greatest extent practicable, changes to the existing water
21 quality of those waters. Outstanding resource waters must be afforded the greatest protection feasible under
22 state law, after thorough examination.

23 (2) The purpose of 75-5-316 and this section is to provide this protection, when necessary, and to
24 provide guidance to the ~~board~~ department in establishing rules to accomplish that level of protection."

25
26 **Section 64.** Section 75-5-316, MCA, is amended to read:

27 **"75-5-316. Outstanding resource water classification -- rules -- criteria -- limitations --**
28 **procedure -- definition.** (1) As provided under the provisions of 75-5-301 and this section, the ~~board~~

1 department may adopt rules regarding the classification of waters as outstanding resource waters.

2 (2) The department may not:

3 (a) grant an authorization to degrade under 75-5-303 in outstanding resource waters; or

4 (b) allow a new or increased point source discharge that would result in a permanent change in the
5 water quality of an outstanding resource water.

6 (3) (a) A person may petition the ~~board~~department for rulemaking to classify state waters as
7 outstanding resource waters. The ~~board~~department shall initially review a petition against the criteria identified
8 in subsection (3)(c) to determine whether the petition contains sufficient credible information for the ~~board~~
9 department to accept the petition.

10 (b) The ~~board~~department may reject a petition without further review if it determines that the petition
11 does not contain the sufficient credible information required by subsection (3)(a). If the ~~board~~department
12 rejects a petition under this subsection (3)(b), it shall specify in writing the reasons for the rejection and the
13 petition's deficiencies.

14 (c) The ~~board~~department may not adopt a rule classifying state waters as outstanding resource
15 waters until it accepts a petition and makes a written finding containing the provisions enumerated in subsection
16 (3)(d) that, based on a preponderance of the evidence:

17 (i) the waters identified in the petition constitute an outstanding resource based on the criteria
18 provided in subsection (4);

19 (ii) the increased protection under the classification is necessary to protect the outstanding resource
20 identified under subsection (3)(a) because of a finding that the outstanding resource is at risk of having one or
21 more of the criteria provided in subsection (4) compromised as a result of pollution; and

22 (iii) classification as an outstanding resource water is necessary because of a finding that there is no
23 other effective process available that will achieve the necessary protection.

24 (d) The written finding provided for in subsection (3)(c) must:

25 (i) identify the criteria provided in subsection (4) that ~~the board believes serve~~serve as justification for
26 the determination that the water is an outstanding resource;

27 (ii) specifically identify the criteria that are at risk and explain why those criteria are at risk; and

28 (iii) specifically explain why other available processes, including the requirements of 75-5-303, will not

1 achieve the necessary protection.

2 (4) The ~~board~~department shall consider the following criteria in determining whether certain state
3 waters are outstanding resource waters. However, the ~~board~~department may determine that compliance with
4 one or more of these criteria is insufficient to warrant classification of the water as an outstanding resource
5 water. The ~~board~~department shall consider:

6 (a) whether the waters have been designated as wild and scenic;

7 (b) the presence of endangered or threatened species in the waters;

8 (c) the presence of an outstanding recreational fishery in the waters;

9 (d) whether the waters provide the only source of suitable water for a municipality or industry;

10 (e) whether the waters provide the only source of suitable water for domestic water supply; and

11 (f) other factors that indicate outstanding environmental or economic values not specifically

12 mentioned in this subsection (4).

13 (5) Before accepting a petition, the ~~board~~department shall:

14 (a) publish a notice and brief description of the petition in a daily newspaper of general circulation in
15 the area affected and make copies of the proposal available to the public. The cost of publication must be paid
16 by the petitioner.

17 (b) provide for a 30-day written public comment period regarding whether the petition contains
18 sufficient credible information, as provided in subsection (3)(b), prior to the hearing required in subsection
19 (5)(c);

20 (c) hold a public hearing regarding the petition and its contents and allow further written and oral
21 testimony at the hearing;

22 (d) issue a proposed decision, including:

23 (i) the written finding provided for in subsection (3)(c); and

24 (ii) the ~~board's~~department's acceptance or rejection of the petition;

25 (e) provide for a 30-day public comment period regarding the ~~board's~~department's proposed
26 decision; and

27 (f) issue a final decision on acceptance or rejection of the petition, which must include a response to
28 comments ~~that were~~ received by the ~~board~~department, and make copies of this decision available to the

1 public.

2 (6) (a) After acceptance of a petition, the ~~board shall direct the department to~~shall prepare an
3 environmental impact statement, as provided under Title 75, chapter 1, part 2, and this section.

4 (b) (i) The petitioner is responsible for all of the costs associated with gathering and compiling data
5 and information, and completing the environmental impact statement.

6 (ii) Before the department may initiate work on the environmental impact statement, the petitioner shall
7 pay the estimated cost of completing the environmental impact statement, as determined by the department.

8 (iii) Upon completion of the environmental impact statement, the petitioner shall pay the department
9 any costs that exceeded the estimated cost. If the cost of the environmental impact statement was less than the
10 estimated cost paid by the petitioner, the department shall reimburse the difference to the petitioner.

11 (iv) The ~~board~~department may not grant or deny a petition until full payment for the environmental
12 impact statement ~~has been~~is received by the ~~department~~.

13 (7) The ~~board~~department shall consult with other relevant state agencies and county governments
14 when reviewing outstanding resource water classification petitions.

15 (8) (a) After completion of an environmental impact statement and consultation with state agencies
16 and local governments, the ~~board~~department may deny an accepted outstanding resource water classification
17 petition if it finds that:

18 (i) the requirements of subsection (3)(c) have not been met; or

19 (ii) based on information available to the ~~board~~department from the environmental impact statement or
20 otherwise, approving the outstanding resource waters classification petition would cause significant adverse
21 environmental, social, or economic impacts.

22 (b) If the ~~board~~department denies the petition, it shall identify its reasons for petition denial.

23 (c) If the ~~board~~department grants the petition, the ~~board~~department shall initiate rulemaking to
24 classify the waters as outstanding resource waters.

25 (9) A rule classifying state waters as outstanding resource waters under this section may be adopted
26 but is not effective until approved by the legislature.

27 (10) The ~~board~~department may not postpone or deny an application for an authorization to degrade
28 state waters under 75-5-303 based on pending:

(a) ~~board~~ department action on an outstanding resource water classification petition regarding those waters; or

(b) legislative approval of ~~board~~ department action designating those waters as outstanding resource waters.

(11) As used in this section, "petitioner" means an individual, corporation, partnership, firm, association, or other private or public entity that petitions the ~~board~~ department to adopt rules to classify waters as outstanding resource waters."

Section 65. Section 75-5-318, MCA, is amended to read:

"75-5-318. Short-term water quality standards for turbidity. (1) Upon authorization by the department or the department of fish, wildlife, and parks pursuant to subsection (4), the short-term water quality standards for total suspended sediment and turbidity resulting from stream-related construction activities or stream enhancement projects are the narrative standards for total suspended sediment adopted by the ~~board~~ department under 75-5-301. If a short-term narrative standard is authorized under this section, the numeric standard for turbidity adopted by the ~~board~~ department under 75-5-301 does not apply to the affected water body during the term of the narrative standard.

(2) The department shall review each application for short-term standards on a case-by-case basis to determine whether there are reasonable alternatives that preclude the need for a narrative standard. If the department determines that the numeric standard for turbidity adopted ~~by the board~~ under 75-5-301 cannot be achieved during the term of the activity and that there are no reasonable alternatives to achieve the numeric standard, the department may authorize the use of a narrative standard for a specified term.

(3) Each authorization issued by the department must include conditions that minimize, to the extent practicable, the magnitude of any change in water quality and the length of time during which any change may occur. The authorization must also include site-specific conditions that ensure that the activity is not harmful, detrimental, or injurious to public health and the uses of state waters and that ensure that existing and designated beneficial uses of state water are protected and maintained upon completion of the activity. The department may not authorize short-term narrative standards for activities requiring a discharge permit under rules adopted ~~by the board~~ pursuant to 75-5-401. Authorizations issued under this section may include

1 conditions that require water quality or quantity monitoring and reporting.

2 (4) In the performance of its responsibilities under this section, the department may negotiate
3 operating agreements with other departments of state government that are intended to minimize duplication in
4 review of activities eligible for authorizations under this section. The department of fish, wildlife, and parks may,
5 in accordance with subsections (1), (2), and (3), authorize short-term water quality standards for total
6 suspended sediment and turbidity for any stream construction project that it reviews under Title 75, chapter 7,
7 part 1, or Title 87, chapter 5, part 5."

8

9 **Section 66.** Section 75-5-401, MCA, is amended to read:

10 **"75-5-401. (Temporary) ~~Board rules~~ Rules for permits -- ground water exclusions.** (1) Except as
11 provided in subsection (5), the ~~board~~ department shall adopt rules:

12 (a) governing application for permits to discharge sewage, industrial wastes, or other wastes into
13 state waters, including rules requiring the filing of plans and specifications relating to the construction,
14 modification, or operation of disposal systems;

15 (b) governing the issuance, denial, modification, or revocation of permits. The ~~board~~ department may
16 not require a permit for a water conveyance structure or for a natural spring if the water discharged to state
17 waters does not contain industrial waste, sewage, or other wastes. Discharge to surface water of ground water
18 that is not altered from its ambient quality does not constitute a discharge requiring a permit under this part if:

19 (i) the discharge does not contain industrial waste, sewage, or other wastes;

20 (ii) the water discharged does not cause the receiving waters to exceed applicable standards for any
21 parameters; and

22 (iii) to the extent that the receiving waters in their ambient state exceed standards for any parameters,
23 the discharge does not increase the concentration of the parameters.

24 (c) governing authorization to discharge under a general permit for storm water associated with
25 construction activity. These rules must allow an owner or operator to notify the department of the intent to be
26 covered under the general permit. This notice of intent must include a signed pollution prevention plan that
27 requires the applicant to implement best management practices in accordance with the general permit. The
28 rules must authorize the owner or operator to discharge under the general permit on receipt of the notice and

1 plan by the department.

2 (2) The rules must allow the issuance or continuance of a permit only if the department finds that
3 operation consistent with the limitations of the permit will not result in pollution of any state waters, except that
4 the rules may allow the issuance of a temporary permit under which pollution may result if the department
5 ensures that the permit contains a compliance schedule designed to meet all applicable effluent standards and
6 water quality standards in the shortest reasonable period of time.

7 (3) The rules must provide that the department may revoke a permit if the department finds that the
8 holder of the permit has violated its terms, unless the department also finds that the violation was accidental
9 and unforeseeable and that the holder of the permit corrected the condition resulting in the violation as soon as
10 was reasonably possible.

11 (4) The ~~board~~department may adopt rules governing reclamation of sites disturbed by construction,
12 modification, or operation of permitted activities for which a bond is voluntarily filed by a permittee pursuant to
13 75-5-405, including rules for the establishment of criteria and procedures governing release of the bond or other
14 surety and release of portions of a bond or other surety.

15 (5) Discharges of sewage, industrial wastes, or other wastes into state ground waters from the
16 following activities or operations are not subject to the ground water permit requirements adopted under
17 subsections (1) through (4):

18 (a) discharges or activities at wells injecting fluids associated with oil and gas exploration and
19 production regulated under the federal underground injection control program;

20 (b) disposal by solid waste management systems licensed pursuant to 75-10-221;

21 (c) individuals disposing of their own normal household wastes on their own property;

22 (d) hazardous waste management facilities permitted pursuant to 75-10-406;

23 (e) water injection wells, reserve pits, and produced water pits used in oil and gas field operations and
24 approved pursuant to Title 82, chapter 11;

25 (f) agricultural irrigation facilities;

26 (g) storm water disposal or storm water detention facilities;

27 (h) subsurface disposal systems for sanitary wastes serving individual residences;

28 (i) in situ mining of uranium facilities controlled under Title 82, chapter 4, part 2;

(j) mining operations subject to operating permits or exploration licenses in compliance with The Strip and Underground Mine Reclamation Act, Title 82, chapter 4, part 2, or the metal mine reclamation laws, Title 82, chapter 4, part 3; or

(k) projects reviewed under the provisions of the Montana Major Facility Siting Act, Title 75, chapter 20.

(6) Notwithstanding the provisions of 75-5-301(4), mixing zones for activities excluded from permit requirements under subsection (5) of this section must be established by the permitting agency for those activities in accordance with 75-5-301(4)(a) through (4)(c).

(7) Notwithstanding the exclusions set forth in subsection (5), any excluded source that the department determines may be causing or is likely to cause violations of ground water quality standards may be required to submit monitoring information pursuant to 75-5-602.

(8) The ~~board~~department may adopt rules identifying other activities or operations from which a discharge of sewage, industrial wastes, or other wastes into state ground waters is not subject to the ground water permit requirements adopted under subsections (1) through (4).

(9) The ~~board~~department may adopt rules authorizing general permits for categories of point source discharges. The rules may authorize discharge upon issuance of an individual authorization by the department or upon receipt of a notice of intent to be covered under the general permit.

75-5-401. (Effective on occurrence of contingency) ~~Board rules~~Rules for permits -- ground water exclusions. (1) Except as provided in subsection (5), the ~~board~~department shall adopt rules:

(a) governing application for permits to discharge sewage, industrial wastes, or other wastes into state waters, including rules requiring the filing of plans and specifications relating to the construction, modification, or operation of disposal systems;

(b) governing the issuance, denial, modification, or revocation of permits. The ~~board~~department may not require a permit for a water conveyance structure or for a natural spring if the water discharged to state waters does not contain industrial waste, sewage, or other wastes. Discharge to surface water of ground water that is not altered from its ambient quality does not constitute a discharge requiring a permit under this part if:

(i) the discharge does not contain industrial waste, sewage, or other wastes;

(ii) the water discharged does not cause the receiving waters to exceed applicable standards for any

1 parameters; and

2 (iii) to the extent that the receiving waters in their ambient state exceed standards for any parameters,
3 the discharge does not increase the concentration of the parameters.

4 (c) governing authorization to discharge under a general permit for storm water associated with
5 construction activity. These rules must allow an owner or operator to notify the department of the intent to be
6 covered under the general permit. This notice of intent must include a signed pollution prevention plan that
7 requires the applicant to implement best management practices in accordance with the general permit. The
8 rules must authorize the owner or operator to discharge under the general permit on receipt of the notice and
9 plan by the department.

10 (2) The rules must allow the issuance or continuance of a permit only if the department finds that
11 operation consistent with the limitations of the permit will not result in pollution of any state waters, except that
12 the rules may allow the issuance of a temporary permit under which pollution may result if the department
13 ensures that the permit contains a compliance schedule designed to meet all applicable effluent standards and
14 water quality standards in the shortest reasonable period of time.

15 (3) The rules must provide that the department may revoke a permit if the department finds that the
16 holder of the permit has violated its terms, unless the department also finds that the violation was accidental
17 and unforeseeable and that the holder of the permit corrected the condition resulting in the violation as soon as
18 was reasonably possible.

19 (4) The ~~board~~department may adopt rules governing reclamation of sites disturbed by construction,
20 modification, or operation of permitted activities for which a bond is voluntarily filed by a permittee pursuant to
21 75-5-405, including rules for the establishment of criteria and procedures governing release of the bond or other
22 surety and release of portions of a bond or other surety.

23 (5) Discharges of sewage, industrial wastes, or other wastes into state ground waters from the
24 following activities or operations are not subject to the ground water permit requirements adopted under
25 subsections (1) through (4):

26 (a) discharges or activities at wells injecting fluids associated with oil and gas exploration and
27 production regulated under the federal underground injection control program;

28 (b) disposal by solid waste management systems licensed pursuant to 75-10-221;

- 1 (c) individuals disposing of their own normal household wastes on their own property;
- 2 (d) hazardous waste management facilities permitted pursuant to 75-10-406;
- 3 (e) water injection wells, reserve pits, and produced water pits used in oil and gas field operations and
- 4 approved pursuant to Title 82, chapter 11;
- 5 (f) agricultural irrigation facilities;
- 6 (g) storm water disposal or storm water detention facilities;
- 7 (h) subsurface disposal systems for sanitary wastes serving individual residences;
- 8 (i) in situ mining of uranium facilities controlled under Title 82, chapter 4, part 2;
- 9 (j) mining operations subject to operating permits or exploration licenses in compliance with The Strip
- 10 and Underground Mine Reclamation Act, Title 82, chapter 4, part 2, or the metal mine reclamation laws, Title
- 11 82, chapter 4, part 3;
- 12 (k) projects reviewed under the provisions of the Montana Major Facility Siting Act, Title 75, chapter
- 13 20; or
- 14 (l) a carbon dioxide injection well for which a permit has been issued pursuant to Title 82, chapter 11,
- 15 part 1.
- 16 (6) Notwithstanding the provisions of 75-5-301(4), mixing zones for activities excluded from permit
- 17 requirements under subsection (5) of this section must be established by the permitting agency for those
- 18 activities in accordance with 75-5-301(4)(a) through (4)(c).
- 19 (7) Notwithstanding the exclusions set forth in subsection (5), any excluded source that the
- 20 department determines may be causing or is likely to cause violations of ground water quality standards may be
- 21 required to submit monitoring information pursuant to 75-5-602.
- 22 (8) The ~~board~~department may adopt rules identifying other activities or operations from which a
- 23 discharge of sewage, industrial wastes, or other wastes into state ground waters is not subject to the ground
- 24 water permit requirements adopted under subsections (1) through (4).
- 25 (9) The ~~board~~department may adopt rules authorizing general permits for categories of point source
- 26 discharges. The rules may authorize discharge upon issuance of an individual authorization by the department
- 27 or upon receipt of a notice of intent to be covered under the general permit."
- 28

1 **Section 67.** Section 75-5-402, MCA, is amended to read:

2 **"75-5-402. Duties of department.** The department shall:

3 (1) issue, suspend, revoke, modify, or deny permits to discharge sewage, industrial wastes, or other
4 wastes into state waters, consistently with rules made by the ~~board~~ department;

5 (2) examine plans and other information needed to determine whether a permit should be issued or
6 suggest changes in plans as a condition to the issuance of a permit;

7 (3) clearly specify in any permit any limitations imposed as to the volume, strength, and other
8 significant characteristics of the waste to be discharged; and

9 (4) establish as conditions to the issuance of permits for which a performance bond or other surety is
10 filed under 75-5-405 certain reclamation requirements sufficient to prevent pollution of state waters during and
11 after operation of the project or activity for which a permit is issued."

12
13 **Section 68.** Section 75-5-403, MCA, is amended to read:

14 **"75-5-403. Denial or modification of permit -- time for review of permit application.** (1) The
15 department shall review for completeness all applications for new permits within 60 days of the receipt of the
16 initial application and within 30 days of receipt of responses to notices of deficiencies. The initial completeness
17 notice must note all major deficiency issues, based on the information submitted. The department and the
18 applicant may extend these timeframes, by mutual agreement, by not more than 75 days. An application is
19 considered complete unless the applicant is notified of a deficiency within the appropriate review period.

20 (2) If the department denies an application for a permit or modifies a permit, the department shall give
21 written notice of its action to the applicant or holder and the applicant or holder may request a hearing before
22 the ~~board~~ department, in the manner stated in 75-5-611, for the purpose of petitioning the ~~board~~ department to
23 reverse or modify the action of the department. The hearing must be held within 30 days after receipt of written
24 request. After the hearing, the ~~board~~ department shall affirm, modify, or reverse the action of the department. If
25 the holder does not request a hearing ~~before the board~~, modification of a permit is effective 30 days after
26 receipt of notice by the holder unless the department specifies a later date. If the holder does request a hearing
27 ~~before the board~~, an order modifying the permit is not effective until 20 days after receipt of notice of the action
28 of the ~~board~~ department."

1

2 **Section 69.** Section 75-5-404, MCA, is amended to read:

3 **"75-5-404. Suspension or revocation of permit -- procedure.** If the department suspends or
4 revokes a permit because it has reason to believe that the holder has violated this chapter, the department may
5 specify that the suspension or revocation is effective immediately if the department finds that the violation is
6 likely to continue and will cause pollution, the harmful effects of which will not be remedied immediately on the
7 cessation of the violation. Upon petition by the holder of the permit, the ~~board~~department shall grant the holder
8 a hearing, to be conducted in the manner specified in 75-5-611, and shall issue an order affirming, modifying, or
9 reversing the action of the department. The order ~~of the board shall be~~is effective immediately unless the ~~board~~
10 department directs otherwise."

11

12 **Section 70.** Section 75-5-502, MCA, is amended to read:

13 **"75-5-502. ~~Board~~Department authorized to accept loans and grants.** The ~~board~~department may
14 accept loans and grants from the federal government and other sources to carry out the provisions of this
15 chapter."

16

17 **Section 71.** Section 75-5-514, MCA, is amended to read:

18 **"75-5-514. When ~~board~~department to establish rates and collect charges.** (1) In the event a
19 municipality or other entity operating sewage systems fails, neglects, or refuses when required by the
20 department to adopt the system of charges and rates authorized by 75-5-511, the ~~board~~department may adopt
21 a system of charges and rates as provided for in 75-5-511(1) and collect, administer, and apply such revenues
22 for the purposes of 75-5-512.

23 (2) In lieu of proceeding in the manner set forth in subsection (1) of this section, the department may
24 institute proceedings at law or in equity to enforce compliance with or restrain violations of 75-5-511 through 75-
25 5-513."

26

27 **Section 72.** Section 75-5-515, MCA, is amended to read:

28 **"75-5-515. Determination of costs payable by users.** In determining the amount of treatment works

1 costs to be paid by recipients of treatment works services, the municipality or other entity operating sewage
2 systems or, if applicable, the ~~board~~ department shall consider the strength, volume, types, and delivery flow
3 rate characteristics of the waste; the nature, location, and type of treatment works; the receiving waters; and
4 ~~such other factors as~~ deemed necessary."

5
6 **Section 73.** Section 75-5-516, MCA, is amended to read:

7 **"75-5-516. Fees authorized for recovery -- process -- rulemaking.** (1) Except as provided in
8 subsections (12) and (13), the ~~board~~ department shall by rule prescribe fees ~~to be assessed by the department~~
9 ~~that are~~ sufficient to cover the ~~board's and~~ department's documented costs, both direct and indirect, of:

10 (a) reviewing and acting upon an application for a permit, permit modification, permit renewal,
11 certificate, license, or other authorization required by rule under 75-5-201 or 75-5-401;

12 (b) reviewing and acting upon a petition for a degradation allowance under 75-5-303;

13 (c) reviewing and acting upon an application for a permit, certificate, license, or other authorization for
14 which an exclusion is provided by rule from the permitting requirements established under 75-5-401;

15 (d) enforcing the terms and conditions of a permit or authorization identified in subsections (1)(a)
16 through (1)(c). If the permit or authorization is not issued, the department shall return this portion of any
17 application fee to the applicant.

18 (e) conducting compliance inspections and monitoring effluent and ambient water quality; and

19 (f) preparing water quality rules or guidance documents.

20 (2) Except as provided in subsection (12), the rules promulgated ~~by the board~~ under this section must
21 include:

22 (a) a fee on all applications for permits or authorizations, as identified in subsections (1)(a) through
23 (1)(c), that recovers to the extent permitted by this subsection (2) the department's cost of reviewing and acting
24 upon the applications. This fee may not be more than \$5,000 per discharge point for an application addressed
25 under subsection (1), except that an application with multiple discharge points may be assessed a lower fee for
26 those points according to ~~board~~ rule.

27 (b) an annual fee to be assessed according to the volume and concentration of waste discharged into
28 state waters. The annual fee may not be more than \$3,000 per million gallons discharged per day on an annual

1 average for any activity under permit or authorization, as described in subsection (1), except that:

2 (i) a permit or authorization with multiple discharge points may be assessed a lower fee for those
3 points according to ~~board~~ rule; and

4 (ii) a facility that consistently discharges effluent at less than or equal to one-half of its effluent
5 limitations and that is in compliance with other permit requirements, using the previous calendar year's
6 discharge data, is entitled to a 25% reduction in its annual permit fee. Proportionate reductions of up to 25% of
7 the permit fee may be given to facilities that consistently discharge effluent at levels between 50% and 100% of
8 their effluent limitations. However, a new permittee is not eligible for a fee reduction in its first year of operation,
9 and a permittee with a violation of any effluent limit during the previous calendar year is not eligible for a fee
10 reduction for the following year.

11 (3) To the extent permitted under subsection (2)(b), the annual fee must be sufficient to pay the
12 department's estimated cost of conducting all tasks described under subsection (1) after subtracting:

13 (a) the fees collected under subsection (2)(a);

14 (b) state general fund appropriations for functions administered under this chapter; and

15 (c) federal grants for functions administered under this chapter.

16 (4) For purposes of subsection (3), the department's estimated cost of conducting the tasks described
17 under subsection (1) is the amount authorized by the legislature for the department's water quality discharge
18 permit programs.

19 (5) If the applicant or holder fails to pay a fee assessed under this section or rules adopted under this
20 section within 90 days after the date established by rule for fee payment, the department may:

21 (a) impose an additional assessment consisting of not more than 20% of the fee plus interest on the
22 required fee computed as provided in 15-1-216; or

23 (b) suspend the permit or exclusion. The department may lift the suspension at any time up to 1 year
24 after the suspension occurs if the holder has paid all outstanding fees, including all penalties, assessments, and
25 interest imposed under subsection (5)(a).

26 (6) Fees collected pursuant to this section must be deposited in an account in the special revenue
27 fund type pursuant to 75-5-517.

28 (7) The department shall give written notice to each person assessed a fee under this section of the

1 amount of fee that is assessed and the basis for the department's calculation of the fee. This notice must be
2 issued at least 30 days prior to the due date for payment of the assessment.

3 (8) A holder of or an applicant for a permit, certificate, or license may appeal the department's fee
4 assessment to the ~~board~~ department within 20 days after receiving written notice of the ~~department's~~ fee
5 determination under subsection (7). The appeal ~~to the board~~ must include a written statement detailing the
6 reasons that the permitholder or applicant considers the department's fee assessment to be erroneous or
7 excessive.

8 (9) If part of the department's fee assessment is not in dispute in an appeal filed under subsection (8),
9 the undisputed portion of the fee must be paid to the department upon written request of the department.

10 (10) The contested case provisions of the Montana Administrative Procedure Act, provided for in Title
11 2, chapter 4, part 6, apply to a hearing before the ~~board~~ department under this section.

12 (11) A municipality may raise rates to cover costs associated with the fees prescribed in this section for
13 a public sewer system without the hearing required in 69-7-111.

14 (12) (a) The application fee assessed pursuant to this section for a suction dredge, as described in 82-
15 4-310(2), may not be more than:

16 (i) \$25 if it is owned and operated by a resident of this state; or

17 (ii) \$100 if it is owned and operated by a nonresident of this state.

18 (b) The annual fee assessed pursuant to this section for a suction dredge, as described in 82-4-
19 310(2), may not be more than:

20 (i) \$25 if it is owned and operated by a resident of this state; or

21 (ii) \$100 if it is owned and operated by a nonresident of this state.

22 (13) A county, an incorporated city or town, or a conservation district formed pursuant to Title 76,
23 chapter 15, is not subject to fees for authorizations pursuant to 75-5-318 or certifications related to section 401
24 of the federal Clean Water Act, 33 U.S.C. 1341."

25
26 **Section 74.** Section 75-5-611, MCA, is amended to read:

27 **"75-5-611. Violation of chapter -- administrative actions and penalties -- notice and hearing. (1)**

28 When the department has reason to believe that a violation of this chapter, a rule adopted under this chapter, or

1 a condition of a permit or authorization required by a rule adopted under this chapter has occurred, it may have
2 a written notice letter served personally or by certified mail on the alleged violator or the violator's agent. The
3 notice letter must state:

4 (a) the provision of statute, rule, permit, or approval alleged to be violated;

5 (b) the facts alleged to constitute the violation;

6 (c) the specific nature of corrective action that the department requires;

7 (d) as applicable, the amount of the administrative penalty that will be assessed by order under
8 subsection (2) if the corrective action is not taken within the time provided under subsection (1)(e); and

9 (e) as applicable, the time within which the corrective action is to be taken or the administrative
10 penalty will be assessed. For the purposes of this chapter, service by certified mail is complete on the date of
11 receipt. Except as provided in subsection (2)(a)(ii), an administrative penalty may not be assessed until the
12 provisions of subsection (1) have been complied with.

13 (2) (a) The department may issue an administrative notice and order in lieu of the notice letter
14 provided under subsection (1) if the department's action:

15 (i) does not involve assessment of an administrative penalty; or

16 (ii) seeks an administrative penalty only for an activity that it believes and alleges has violated or is
17 violating 75-5-605.

18 (b) A notice and order issued under this section must meet all of the requirements specified in
19 subsection (1).

20 (3) In a notice and order given under subsection (1), the department may require the alleged violator
21 to appear ~~before the board~~ for a public hearing and to answer the charges. The hearing must be held no sooner
22 than 15 days after service of the notice and order, except that the ~~board~~ department may set an earlier date for
23 hearing if it is requested to do so by the alleged violator. The ~~board~~ department may set a later date for hearing
24 at the request of the alleged violator if the alleged violator shows good cause for delay.

25 (4) If the department does not require an alleged violator to appear ~~before the board~~ for a public
26 hearing, the alleged violator may request the ~~board~~ department to conduct the hearing. The request must be in
27 writing and must be filed with the department no later than 30 days after service of a notice and order under
28 subsection (2). If a request is filed, a hearing must be held within a reasonable time. If a hearing is not

1 requested within 30 days after service upon the alleged violator, the opportunity for a contested case appeal to
2 the ~~board~~-department under Title 2, chapter 4, part 6, is waived.

3 (5) If a contested case hearing is held under this section, it must be public and must be held in the
4 county in which the violation is alleged to have occurred or in Lewis and Clark County.

5 (6) (a) After a hearing, the ~~board~~-department shall make findings and conclusions that explain its
6 decision.

7 (b) If the ~~board~~-department determines that a violation has occurred, it shall also issue an appropriate
8 order for the prevention, abatement, or control of pollution, the assessment of administrative penalties, or both.

9 (c) If the order requires abatement or control of pollution, the ~~board~~-department shall state the date or
10 dates by which a violation must cease and may prescribe timetables for necessary action in preventing,
11 abating, or controlling the pollution.

12 (d) If the order requires payment of an administrative penalty, the ~~board~~-department shall explain how
13 it determined the amount of the administrative penalty.

14 (e) If the ~~board~~-department determines that a violation has not occurred, it shall declare the
15 department's notice void.

16 (7) The alleged violator may petition the ~~board~~-department for a rehearing on the basis of new
17 evidence, which petition the ~~board~~-department may grant for good cause shown.

18 (8) Instead of issuing an order, the ~~board may direct the department to may~~ initiate appropriate action
19 for recovery of a penalty under 75-5-631, 75-5-632, 75-5-633, or 75-5-635.

20 (9) (a) Except as provided in subsection (9)(d), an action initiated under this section may include an
21 administrative penalty of not more than \$10,000 for each day of each violation; however, the maximum penalty
22 may not exceed \$100,000 for any related series of violations.

23 (b) Administrative penalties collected under this section must be deposited in the general fund.

24 (c) In determining the amount of penalty to be assessed to a person, the department ~~and board~~ shall
25 consider the penalty factors in 75-1-1001, rules promulgated under 75-5-201, and subsection (9)(d).

26 (d) A person who commits a violation that adversely affects the department's administration of this
27 chapter, a rule adopted pursuant to this chapter, or a condition of a permit or authorization issued under this
28 chapter but does not harm or have the potential to harm human health, the environment, or the department's

ability to protect human health or the environment may not be assessed a penalty of more than \$500 for each day of the violation, not to exceed \$5,000 for all days of the same violation.

(e) The contested case provisions of the Montana Administrative Procedure Act, provided for in Title 2, chapter 4, part 6, apply to a hearing conducted under this section."

Section 75. Section 75-5-614, MCA, is amended to read:

"75-5-614. Injunctions authorized. (1) Except as provided in 81-9-240, the department is authorized to commence a civil action seeking appropriate relief, including a permanent or temporary injunction, for a violation that would be subject to a compliance order under 75-5-613. An action under this subsection may be commenced in the district court of the county where a violation occurs or is threatened, and the court has jurisdiction to restrain the violation and to require compliance.

(2) Except as provided in 81-9-240, the department may bring an action for an injunction against the continuation of an alleged violation of the terms or conditions of a permit issued by the department or any rule or effluent standard promulgated under this chapter or against a person who fails to comply with an emergency order issued by the department under 75-5-621 or a final order of the ~~board~~ department. The court to which the department applies for an injunction may issue a temporary injunction if it finds that there is reasonable cause to believe that the allegations of the department are true, and it may issue a temporary restraining order pending action on the temporary injunction."

Section 76. Section 75-5-621, MCA, is amended to read:

"75-5-621. Emergencies. (1) Notwithstanding other provisions of this chapter, if the department finds that a person is committing or is about to commit an act in violation of this chapter or an order or rule issued under this chapter that, if it occurs or continues, will cause substantial pollution the harmful effects of which will not be remedied immediately after the commission or cessation of the act, the department may order the person to stop, avoid, or moderate the act so that the substantial injury will not occur. The order is effective immediately upon receipt by the person to whom it is directed, unless the department provides otherwise.

(2) Notice of the order must conform to the requirements of 75-5-611(1) so far as practicable. The notice must indicate that the order is an emergency order.

(3) Upon issuing an order, the department shall fix a place and time for a hearing ~~before the board,~~ not later than 5 days after issuing the order unless the person to whom the order is directed requests a later time. The department may deny a request for a later time if it finds that the person to whom the order is directed is not complying with the order. The hearing must be conducted in the manner specified in 75-5-611. As soon as practicable after the hearing, the ~~board~~ department shall affirm, modify, or set aside the order ~~of the department.~~ The order ~~of the board~~ must be accompanied by the information required in 75-5-611(6). An action for review of the order ~~of the board~~ may be initiated in the manner specified in 75-5-641. Except as provided in 81-9-240, the initiation of an action or taking of an appeal may not stay the effectiveness of the order unless the court finds that the ~~board~~ department did not have reasonable cause to issue an order under this section."

Section 77. Section 75-5-641, MCA, is amended to read:

"75-5-641. Appeals from ~~board~~ department orders -- review by district court. (1) An appeal of an order of the ~~board~~ department must be in the district court of the county in which the alleged source of pollution is located.

(2) A person interested in the order may intervene, in the manner provided by the rules of civil procedure, if the person shows good cause. An intervenor is a party for the purposes of this chapter.

(3) The attorney general shall represent the ~~board~~ department if requested, or the department may appoint special counsel for the proceedings, subject to the approval of the attorney general.

(4) Except as provided in 81-9-240, the initiation of an action for review or the taking of an appeal does not stay the effectiveness of an order ~~of the board~~ unless the court finds that there is probable cause to believe:

(a) that refusal to grant a stay will cause serious harm to the affected party; and

(b) that a violation found by the ~~board~~ department will not continue or, if it does continue, the harmful effects on state waters will be remedied immediately on the cessation of the violation.

(5) If a court does not stay the effectiveness of an order ~~of the board~~, it may enforce compliance with that order by issuing a temporary restraining order or an injunction at the request of the ~~board~~ department."

Section 78. Section 75-5-702, MCA, is amended to read:

"75-5-702. Monitoring -- water quality assessment listing -- costs payable by department --

statewide advisory group. (1) The department shall monitor state waters to assess the quality of those waters and to identify surface water bodies or segments of surface water bodies that are threatened or impaired. The department shall use the monitoring results to revise the list of water bodies that are identified as threatened or impaired and to establish a priority ranking for TMDL development for those waters in accordance with subsections (4) and (7).

(2) In revising the list prepared pursuant to this section, the department shall use all currently available data, including information or data obtained from federal, state, and local agencies, private entities, or individuals with an interest in water quality protection. Except as provided in subsection (6), the department may modify the list only if there is sufficient credible data to support the modification. Prior to publishing a final list, the department shall provide public notice and allow 60 days for public comment on the draft list. The department shall make available for public review, upon request, documentation used in the determination to list or delist a particular water body, including, at a minimum, a description of the information, data, and methodology used. The department may charge a reasonable fee for the documentation, commensurate with the cost of providing the documentation to the requestor.

(3) A person may request that the department add or remove a water body or reprioritize a water body on a draft or published list by providing the data or information necessary to support the request. The department shall review the data within 60 days from its submittal. If the department determines that there is sufficient credible data to grant the request, the department shall provide public notice of its intended action and allow 60 days for public comment prior to taking action on the request. A person aggrieved by the department's decision to grant or deny the request may appeal the ~~department's~~ decision to the ~~board~~ department.

(4) The department shall, in consultation with local conservation districts and watershed advisory groups pursuant to 75-5-704, review and revise the list and priority rankings of water bodies identified as threatened or impaired. The department shall review and revise the list at intervals not to exceed 5 years. The department shall make available for public review the data and information used in making any changes in its list of threatened or impaired water bodies that is developed and maintained pursuant to this section.

(5) By October 1, 1999, and in consultation with the statewide TMDL advisory group established pursuant to subsection (10), the department shall develop and maintain a data management system that can be

1 used to assess the validity and reliability of the data used in the listing and priority ranking process. The
2 department shall make available to the public, upon request, data from its data management system. The
3 department may charge a reasonable fee for the data, commensurate with its cost of providing the data to the
4 requestor.

5 (6) By October 1, 1999, and in consultation with the statewide TMDL advisory group, the department
6 shall use the data management system developed and maintained pursuant to subsection (5) to revise the list
7 and to remove any water body that lacks sufficient credible data to support its listing. If the department removes
8 a water body because there is a lack of sufficient credible data to support its listing, the department shall
9 monitor and assess that water body during the next field season or as soon as possible thereafter to determine
10 whether it is a threatened water body or an impaired water body.

11 (7) Except as provided in subsection (9), in prioritizing water bodies for TMDL development, the
12 department shall, in consultation with the statewide TMDL advisory group, take into consideration the following:

13 (a) the beneficial uses established for a water body;

14 (b) the extent that natural factors over which humans have no control are contributing to any
15 impairment;

16 (c) the impacts to human health and aquatic life;

17 (d) the degree of public interest and support;

18 (e) the character of the pollutant and the severity and magnitude of water quality standard
19 noncompliance;

20 (f) whether the water body is an important high-quality resource in an early stage of degradation;

21 (g) the size of the water body not achieving standards;

22 (h) immediate programmatic needs, such as waste load allocations for new permits or permit
23 renewals and load allocations for new nonpoint sources;

24 (i) court orders and decisions relating to water quality;

25 (j) state policies and priorities, including the protection and restoration of native fish when appropriate;

26 (k) the availability of technology and resources to correct the problems;

27 (l) whether actions or voluntary programs that are likely to correct the impairment of a particular water
28 body are currently in place; and

1 (m) the recreational, economic, and aesthetic importance of a particular water body.

2 (8) Except as provided in subsection (9), the department shall, in consultation with the statewide
3 TMDL advisory group, develop a method of rating water bodies according to the criteria and considerations
4 described in subsection (7) in order to rank the listed water bodies as high priority, moderate priority, or low
5 priority for TMDL development. The department may not rank a water body as a high priority under this section
6 without first validating the data necessary to support the ranking.

7 (9) (a) When the department receives an application for a new individual permit to discharge into a
8 surface water body or a segment of a surface water body pursuant to 75-5-401, the surface water body or
9 segment of a surface water body has been listed pursuant to subsection (2) of this section, the discharge would
10 contain a pollutant for which the water body or segment is threatened or impaired, and a TMDL has not been
11 developed for that water body or segment, the department shall:

12 (i) within 30 days of the department's receipt of the application, initiate the development of a TMDL on
13 the water body or segment; and

14 (ii) except as provided in subsection (9)(b), within 180 days of the department's receipt of the
15 application, complete development of the TMDL pursuant to 75-5-703.

16 (b) If the department is not able to complete development of the TMDL in accordance with subsection
17 (9)(a)(ii), the department shall, within 30 days of the department's receipt of the application, specify in writing to
18 the applicant why the department is not able to complete development of a TMDL in accordance with
19 subsection (9)(a)(ii). The department and the applicant shall make reasonable efforts to mutually agree in
20 writing to a timeframe in which the department shall complete development of the TMDL. If the department
21 specifies a lack of resources as a reason why the department cannot complete development of the TMDL in
22 accordance with subsection (9)(a)(ii), the department shall clearly explain in its written specification what
23 resources are not available, why those resources are not available, and when those resources will be available.

24 (c) If the department and the applicant cannot mutually agree to a timeframe in accordance with
25 subsection (9)(b), the department shall, within 60 days of the department's receipt of the application, specify in
26 writing to the applicant the timeframe in which the TMDL will be completed by the department and the reasons
27 why that timeframe is appropriate. If the department specifies a lack of resources as a reason why the
28 department's timeframe is appropriate, the department may request the applicant provide funding for the

1 development of the TMDL in order to accelerate the completion of the TMDL.

2 (d) The applicant may, within 15 days of the department's written specification provided in accordance
3 with subsection (9)(c), request in writing a hearing before the ~~board~~ department for the purpose of petitioning
4 ~~the board~~ to reverse or modify the department's decision. The contested case provisions of the Montana
5 Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing ~~before the board~~ under this
6 subsection. If the parties to the contested case waive a formal proceeding pursuant to 2-4-603, the informal
7 proceeding must be conducted within 30 days after ~~the board's~~ receipt of the written request. After the hearing
8 and in a reasonable time, the ~~board~~ department shall affirm, modify, or reverse ~~the its~~ action ~~of the department~~,
9 and ~~the board~~ shall make findings and conclusions that explain its decision. Pending the ~~board's~~ decision, the
10 department shall develop the TMDL in accordance with the timeframe specified in subsection (9)(a)(ii).

11 (e) The department may not declare an application incomplete or deficient because a TMDL has not
12 been prepared.

13 (f) If on April 27, 2015, an application for a new individual permit to discharge into a surface water
14 body or a segment of a surface water body pursuant to 75-5-401 is pending, the surface water body or segment
15 of a surface water body has been listed pursuant to subsection (2) of this section, the discharge would contain
16 a pollutant for which the water body or segment is threatened or impaired, and a TMDL has not been developed
17 for the water body or segment, the department shall, except as provided in subsection (9)(g), complete a TMDL
18 for the water body or segment within 180 days of April 27, 2015.

19 (g) If the department is not able to complete development of the TMDL within 180 days of April 27,
20 2015, pursuant to subsection (9)(f), then the timeframes established in accordance with subsections (9)(b),
21 (9)(c), and (9)(d) apply to the application, but the timeframes are measured from April 27, 2015, not from the
22 date the department receives an application.

23 (10) (a) The department shall establish a statewide TMDL advisory group to serve in the consultation
24 capacity set forth in 75-5-703, 75-5-704, and this section. Fourteen members, and any replacement members
25 that may be necessary, must be appointed by the director, based upon one nomination from each of the
26 following interests:

27 (i) livestock-oriented agriculture;

28 (ii) farming-oriented agriculture;

- (iii) conservation or environmental interests;
- (iv) water-based recreationists;
- (v) the forestry industry;
- (vi) municipalities;
- (vii) point source dischargers;
- (viii) mining;
- (ix) federal land management agencies;
- (x) state trust land management agencies;
- (xi) supervisors of soil and water conservation districts for counties east of the continental divide;
- (xii) supervisors of soil and water conservation districts for counties west of the continental divide;
- (xiii) the hydroelectric industry; and
- (xiv) fishing-related businesses.

(b) If the director receives more than one nomination from a particular interest, the director shall notify the respective nominators and request that they agree on one nominee.

(11) The department shall provide public notice of meetings of the statewide TMDL advisory group and shall solicit, document, and consider public comments provided during the deliberations of the advisory group."

Section 79. Section 75-5-802, MCA, is amended to read:

"75-5-802. Permitting -- concentrated animal feeding operation. (1) For the purpose of permitting concentrated animal feeding operations, the ~~board~~department shall adopt, by reference, the federal regulations and definitions contained in 40 CFR, parts 122.23 and 412.

(2) Subject to the provisions of subsection (3), concentrated animal feeding operations that meet the requirements of 40 CFR, part 412, must be authorized by the department under a general permit.

(3) If, upon review of an application for a general permit authorization for a concentrated animal feeding operation production area, the department discovers site-specific information that indicates that a general permit authorization is not sufficiently protective of water quality, the department shall require an individual permit."

Section 80. Section 75-6-102, MCA, is amended to read:

"75-6-102. Definitions. As used in this part, unless the context clearly indicates otherwise, the following definitions apply:

~~(1)~~ "Board" means the board of environmental review provided for in 2-15-3502.

~~(2)~~(1) "Certified source water protection area" means an area certified by the department that identifies the surface and subsurface area surrounding a source of water for a public water supply system through which contaminants may move toward and reach the source of supply.

~~(3)~~(2) "Community water system" means a public water supply system that serves at least 15 service connections used by year-round residents or that regularly serves at least 25 year-round residents.

~~(4)~~(3) "Contamination" means impairment of the quality of state waters by sewage, industrial waste, or other waste creating a hazard to human health.

~~(5)~~(4) "Cross-connection" means a connection between a public water supply system and another water supply system, either public or private, or a wastewater or sewerline or other potential source of contamination so that a flow of water into or contamination of the public water supply system from the other source of water or contamination is possible.

~~(6)~~ (5) "Department" means the department of environmental quality provided for in 2-15-3501.

~~(7)~~(6) "Drainage" means rainfall, surface, and subsoil water.

~~(8)~~(7) "Industrial waste" means any waste substance from the processes of business or industry or from the development of a natural resource, together with any sewage that may be present.

~~(9)~~(8) "Maximum contaminant level" means the maximum permissible level of a contaminant in water that is delivered to a user of a public water supply system.

~~(10)~~(9) "Other waste" means garbage, municipal refuse, decayed wood, sawdust, shavings, bark, lime, sand, ashes, offal, night soil, oil, grease, tar, heat, chemicals, dead animals, sediment, wrecked or discarded equipment, radioactive materials, solid waste, and all other substances that may pollute state waters.

~~(11)~~(10) "Person" means an individual, firm, partnership, company, association, corporation, city, town, local government entity, federal agency, or any other governmental or private entity, whether organized for profit or not.

~~(12)~~(11) (a) "Pollution" means contamination or other alteration of the physical, chemical, or biological

properties of state waters that exceeds that which is permitted by Montana water quality standards, including but not limited to standards relating to change in temperature, taste, color, turbidity, or odor or the discharge or introduction of a liquid, gaseous, solid, radioactive, or other substance into state water that will or is likely to create a nuisance or render the waters harmful, detrimental, or injurious to public health, recreation, safety, or welfare, to livestock, or to wild animals, birds, fish, or other wildlife.

(b) A discharge that is authorized under the pollution discharge permit rules of the ~~board~~ department is not pollution under this chapter.

~~(13)~~ 12 "Public sewage system" means a system of collection, transportation, treatment, or disposal of sewage that serves 15 or more families or 25 or more persons daily for any 60 or more days in a calendar year.

~~(14)~~ 13 "Public water supply system" means a system for the provision of water for human consumption from a community well, water hauler for cisterns, water bottling plant, water dispenser, or other water supply that has at least 15 service connections or that regularly serves at least 25 persons daily for any 60 or more days in a calendar year.

~~(15)~~ 14 "Reclaimed wastewater" means wastewater that is treated by a public sewage system for reuse for private, public, or commercial purposes.

~~(16)~~ 15 "Safe Drinking Water Act" means 42 U.S.C. 300f and regulations set forth in 40 CFR, parts 141 and 142.

~~(17)~~ 16 "Sewage" means water-carried waste products from residences, public buildings, institutions, or other buildings, including discharge from human beings, together with ground water infiltration and surface water present.

~~(18)~~ 17 "Source water protection program" means a program administered by the department to certify source water protection delineation and assessment reports and source water protection plans and to review source water protection ordinances.

~~(19)~~ 18 "State waters" means a body of water, irrigation system, or drainage system, either surface or underground.

~~(20)~~ 19 "Transient noncommunity water system" means a public water supply system that is not a community water system and that does not regularly serve at least 25 of the same persons for at least 6 months a year."

1

2 **Section 81.** Section 75-6-104, MCA, is amended to read:

3 **"75-6-104. Duties of department.** (1) The department has general supervision over all state waters
4 that are directly or indirectly being used by a person for a public water supply system, for domestic purposes, or
5 as a source of ice.

6 (2) The department shall, subject to the provisions of 75-6-116 and as provided in 75-6-131, adopt
7 rules and standards concerning:

8 (a) maximum contaminant levels for waters that are or will be used for a public water supply system;

9 (b) fees, as described in 75-6-108, for services rendered by the department;

10 (c) monitoring, recordkeeping, and reporting by persons who own or operate public water supply
11 systems;

12 (d) requiring public notice to all users of a public water supply system when a person has been
13 granted a variance or exemption or is in violation of this part or a rule or order issued pursuant to this part;

14 (e) the siting, construction, operation, and modification of a public water supply system or public
15 sewage system, including requirements to remedy:

16 (i) defects in the design, operation, or maintenance of a public water supply system or public sewage
17 system in order to prevent or correct introduction of contamination into water used for a public water supply
18 system, for domestic purposes, or as a source of ice;

19 (ii) fecal contamination in water used by a public water supply system; or

20 (iii) failure or malfunction of the sources, treatment, storage, or distribution portion of a public water
21 supply system in order to prevent or correct introduction of contamination into water used for a public water
22 supply system, for domestic purposes, or as a source of ice;

23 (f) the review of the technical, managerial, and financial capacity of a proposed public water supply
24 system or public sewage system, as necessary to ensure the capability of the system to meet the requirements
25 of this part;

26 (g) the collection and analysis of samples of water used for drinking or domestic purposes;

27 (h) the issuance of variances and exemptions as authorized by the federal Safe Drinking Water Act
28 and this part;

- (i) administrative enforcement procedures and administrative penalties authorized under this part;
- (j) standards and requirements for the review and approval of programs that may be voluntarily submitted by suppliers of public water supply systems to prevent water supply contamination from a cross-connection, including provisions to exempt cross-connections from the standards and requirements if all connected systems are department-approved public water supply systems;
- (k) (i) allowable uses of reclaimed wastewater and classification of those uses;
- (ii) treatment, monitoring, recordkeeping, and reporting standards and requirements tailored to each classification that must be met by the public sewage system to protect the uses of the reclaimed wastewater and any receiving water;
- (iii) prohibition of reclaimed wastewater uses that are not allowable under subsection (2)(k)(i) or for which the reclaimed wastewater has not been treated in compliance with rules adopted under subsection (2)(k)(ii); and
- (iv) a requirement that an applicant who proposes to use reclaimed wastewater pursuant to this subsection (2)(k) has obtained any necessary authorizations required under Title 85 from the department of natural resources and conservation; and
- (l) any other requirement necessary for the protection of public health as described in this part.
- (3) Department rules must provide for the following:
- (a) except as provided in 75-6-131, a water supply or water distribution facility reviewed and approved by the department is not subject to changes in department design and construction criteria for a period of 36 months after written approval of the facility is issued by the department;
- (b) except for facilities subject to permit requirements under Title 75, chapter 5, part 4, and except as provided under rules adopted pursuant to 75-6-131, a system of water supply, drainage, wastewater, or sewage reviewed and approved under this section is not subject to changes in department design or construction criteria for a period of 36 months after written approval is issued by the department;
- (c) plans and specifications for a portion of a facility or system subject to a 36-month limit on criteria changes pursuant to subsections (3)(a) and (3)(b) but not constructed within the 36-month timeframe must be resubmitted for department review and approval before construction of that portion of the facility;
- (d) the provisions of this subsection (3) may not limit an applicant's ability to alter a proposed project

1 that is otherwise in conformance with applicable laws, rules, standards, and criteria.

2 (4) The department may issue orders necessary to fully implement the provisions of this part.

3 (5) The department shall:

4 (1)(a) upon its own initiative or complaint to the department, to the mayor or health officer of a
5 municipality, or to the managing board or officer of a public institution, make an investigation of alleged pollution
6 of a water supply system and, if required, prohibit the continuance of the pollution by ordering removal of the
7 cause of pollution;

8 (2)(b) have waters examined to determine their quality and the possibility that they may endanger
9 public health;

10 (3)(c) consult and advise authorities of cities and towns and persons having or about to construct
11 systems for water supply, drainage, wastewater, and sewage as to the most appropriate source of water supply
12 and the best method of ensuring its quality;

13 (4)(d) advise persons as to the best method of treating and disposing of their drainage, sewage, or
14 wastewater with reference to the existing and future needs of other persons and to prevent pollution;

15 (5)(e) consult with persons engaged in or intending to engage in manufacturing or other business
16 whose drainage or sewage may tend to pollute waters as to the best method of preventing pollution;

17 (6)(f) collect fees, as described in 75-6-108, for services and deposit the fees collected in the public
18 drinking water special revenue fund established in 75-6-115;

19 (7)(g) establish and maintain experiment stations and conduct experiments to study the best methods
20 of treating water, drainage, wastewater, and sewage to prevent pollution, including investigation of methods
21 used in other states;

22 (8)(h) enter on premises at reasonable times to determine sources of pollution or danger to water
23 supply systems and whether rules and standards of the ~~board~~ department are being obeyed;

24 (9)(i) enforce and administer the provisions of this part;

25 (10)(j) establish a plan for the provision of safe drinking water under emergency circumstances;

26 (11)(k) maintain an inventory of public water supply systems and establish a program for conducting
27 sanitary surveys; and

28 (12)(l) enter into agreements with local boards of health whenever appropriate for the performance of

1 surveys and inspections under the provisions of this part."

2

3 **Section 82.** Section 75-6-105, MCA, is amended to read:

4 **"75-6-105. Records required for wells drilled to supply water to public.** Every person drilling a
5 water well to furnish water for public consumption shall keep a complete record of the depth, thickness, and
6 character of different strata and other information prescribed by the ~~board~~ department. Data ~~shall~~ must be
7 furnished to the department on forms prescribed by it. These data are available to the public at all reasonable
8 times."

9

10 **Section 83.** Section 75-6-106, MCA, is amended to read:

11 **"75-6-106. Laboratory license required.** A laboratory analysis of water taken from a public water
12 supply system or any report of an analysis required by this part or a rule adopted under this part may not be
13 accepted by the department ~~or board~~ unless the analysis or report is made by the department of public health
14 and human services' laboratory or by a laboratory licensed by the department of public health and human
15 services for water analysis purposes."

16

17 **Section 84.** Section 75-6-107, MCA, is amended to read:

18 **"75-6-107. Variances and exemptions.** (1) Except as provided in subsection (3), the department
19 may grant a variance or exemption from the requirements of this part or the rules adopted under this part
20 pursuant to the terms and conditions of the variance and exemption rules adopted by the ~~board~~ department.

21 (2) Except as provided in subsection (3), a variance or exemption granted pursuant to this section
22 must be accompanied by a compliance plan specifying a time schedule for compliance.

23 (3) The department may grant for a period of up to 5 years a variance or exemption for a public water
24 system to use bottled water to achieve compliance with a maximum contaminant level for nitrate. The variance
25 or exemption must include the requirement that the owner of the public water system warn the public that the
26 tap water is not potable and could pose a health risk if consumed by:

27 (a) posting signs at locations required by the variance or exemption for the period granted by the
28 variance or exemption; and

(b) delivering annual notices as required by the variance or exemption to users of the public water system.

(4) A person aggrieved by a decision of the department to grant, deny, revoke, or modify a variance or exemption may appeal the department's decision to the ~~board~~ department as provided in the Montana Administrative Procedure Act."

Section 85. Section 75-6-108, MCA, is amended to read:

"75-6-108. ~~Board~~ Department to prescribe fees -- opportunity for appeal. (1) The ~~board~~ department shall by rule prescribe fees to be assessed annually ~~by the department~~ on owners of public water supply systems to recover department costs in providing services under this part. The annual fee for a public water supply system is no more than \$2.25 for each service connection to the public water supply system for the biennium beginning July 1, 1991, and ending June 30, 1993, and thereafter is no more than \$2 for each service connection to the public water supply system, although the minimum fee for any system is \$100, except that the fee for a transient noncommunity water system is \$50.

(2) Public water supply systems in a municipality may raise the rates to recover costs associated with the fees prescribed in this section without the public hearing required in 69-7-111.

(3) The ~~board~~ department shall by rule prescribe fees ~~to be assessed by the department~~ on persons who submit plans and specifications for construction, alteration, or extension of a public water supply system or public sewage system. The fees must be commensurate with the cost to the department of reviewing the plans and specifications.

(4) Fees collected pursuant to this section must be deposited in the public drinking water special revenue fund established in 75-6-115.

(5) (a) The department shall notify the owner of a public water supply system in writing of the amount of the fee to be assessed and the basis for the assessment. The owner may appeal the fee assessment in writing ~~to the board~~ within 20 days after receipt of the written notice.

(b) An appeal must be based on the allegation that the fee is erroneous or excessive. An appeal may not be based only on the fee schedule adopted by the ~~board~~ department.

(c) If any part of the fee assessment is not appealed, it must be paid to the department upon receipt

1 of the notice provided for in subsection (5)(a)."

2

3 **Section 86.** Section 75-6-109, MCA, is amended to read:

4 **"75-6-109. Administrative enforcement.** (1) If the department believes that a violation of this part, a
5 rule adopted under this part, or a condition of approval issued under this part has occurred, it may serve written
6 notice of the violation, by certified mail, on the alleged violator or the violator's agent. The notice must specify
7 the provision of this part, the rule, or the condition of approval alleged to have been violated and the facts
8 alleged to constitute a violation. The notice must include an order to take necessary corrective action within a
9 reasonable period of time. The time period must be stated in the order. Service by mail is complete on the date
10 of filing.

11 (2) If the alleged violator does not request a hearing ~~before the board~~ within 30 days of the date of
12 service, the order becomes final. Failure to comply with a final order may subject the violator to an action
13 commenced pursuant to 75-6-104, 75-6-113, or 75-6-114.

14 (3) If the alleged violator requests a hearing ~~before the board~~ within 30 days of the date of service, the
15 ~~board~~ department shall schedule a hearing. After the hearing is held, the ~~board~~ department may:

16 (a) affirm or modify the ~~department's~~ order issued under subsection (1) if the ~~board~~ department finds
17 that a violation has occurred; or

18 (b) rescind the ~~department's~~ order if the ~~board~~ department finds that a violation has not occurred.

19 (4) An order issued by the department ~~or the board~~ may set a date by which the violation must cease
20 and set a time limit for action to correct a violation.

21 (5) As an alternative to issuing an order pursuant to subsection (1), the department may:

22 (a) require the alleged violator to appear ~~before the board~~ for a hearing, at a time and place specified
23 in the notice, to answer the charges complained of; or

24 (b) initiate an action under 75-6-111(2), 75-6-113, or 75-6-114.

25 (6) (a) An action initiated under this part may include an administrative penalty not to exceed:

26 (i) \$1,000 for each day of a violation pertaining to a public water system, other than a water hauler or
27 a water bottling plant, that serves a population of more than 10,000; and

28 (ii) \$500 for each day of violation for other violations.

(b) Administrative penalties collected under this section must be deposited in the state general fund.

(7) In determining the amount of penalty to be assessed to a person, the department ~~or the board, as appropriate,~~ shall consider the penalty factors in 75-1-1001 and the rules promulgated under ~~75-6-103(2)(i)-75-6-104(2)(i).~~

(8) The contested case provisions of the Montana Administrative Procedure Act, provided for in Title 2, chapter 4, part 6, apply to a hearing under 75-6-108 or this section."

Section 87. Section 75-6-112, MCA, is amended to read:

"75-6-112. Prohibited acts. A person may not:

(1) commence or continue construction, alteration, extension, or operation of a system of water supply or water distribution that is intended to be used as a public water supply system or a system that is intended to be used as a public sewage system before the person submits to the department necessary maps, plans, and specifications for its review and the department approves those maps, plans, and specifications;

(2) operate or maintain a public water supply system that exceeds a maximum contaminant level established by the ~~board~~department unless the person has been granted or has an application pending for a variance or exemption pursuant to this part;

(3) violate any provision of this part or a rule adopted under this part; or

(4) violate any condition or requirement of an approval issued pursuant to this part."

Section 88. Section 75-6-113, MCA, is amended to read:

"75-6-113. Penalty. Any person violating this part or any rule or order of the ~~board or~~ department issued under the provisions of this part shall be guilty of a misdemeanor and upon conviction shall be fined not less than \$50 or more than \$500. Each day upon which a violation of this part occurs shall be considered a separate offense."

Section 89. Section 75-6-116, MCA, is amended to read:

"75-6-116. State regulations no more stringent than federal regulations or guidelines. (1) After April 14, 1995, except as provided in subsections (2) through (5) or unless required by state law, the ~~board~~

1 department may not adopt a rule to implement this chapter that is more stringent than the comparable federal
2 regulations or guidelines that address the same circumstances. The ~~board~~-department may incorporate by
3 reference comparable federal regulations or guidelines.

4 (2) The ~~board~~-department may adopt a rule to implement this chapter that is more stringent than
5 comparable federal regulations or guidelines only if the ~~board~~-department makes a written finding after a public
6 hearing and public comment and based on evidence in the record that:

7 (a) the proposed state standard or requirement protects public health or the environment of the state;
8 and

9 (b) the state standard or requirement to be imposed can mitigate harm to the public health or
10 environment and is achievable under current technology.

11 (3) The written finding must reference information and peer-reviewed scientific studies contained in
12 the record that forms the basis for the ~~board's~~-department's conclusion. The written finding must also include
13 information from the hearing record regarding the costs to the regulated community that are directly attributable
14 to the proposed state standard or requirement.

15 (4) (a) A person affected by a rule of the board of environmental review adopted after January 1,
16 1990, and before April 14, 1995, that that person believes to be more stringent than comparable federal
17 regulations or guidelines may petition the ~~board~~-department to review the rule. If the ~~board~~-department
18 determines that the rule is more stringent than comparable federal regulations or guidelines, the ~~board~~
19 department shall comply with this section by either revising the rule to conform to the federal regulations or
20 guidelines or by making the written finding, as provided under subsection (2), within a reasonable period of
21 time, not to exceed 12 months after receiving the petition. A petition under this section does not relieve the
22 petitioner of the duty to comply with the challenged rule. The ~~board~~-department may charge a petition filing fee
23 in an amount not to exceed \$250.

24 (b) A person may also petition the ~~board~~-department for a rule review under subsection (4)(a) if the
25 ~~board~~ board of environmental review or the department adopts a rule after January 1, 1990, in an area in which
26 no federal regulations or guidelines existed and the federal government subsequently establishes comparable
27 regulations or guidelines that are less stringent than the previously adopted ~~board~~-rule.

28 (5) This section does not apply to a rule adopted under the emergency rulemaking provisions of 2-4-

1 303(1)."

2

3 **Section 90.** Section 75-6-121, MCA, is amended to read:

4 **"75-6-121. Delegation of review of small public water and sewer construction.** (1) If a local
5 government requests a delegation and the appropriate division of the local government has established
6 satisfactory review programs, the department may delegate to the division of local government review of:

7 (a) small public water and sewer systems; and

8 (b) extensions or alterations of existing public water and sewer systems that involve 50 or fewer
9 connections.

10 (2) The ~~board~~department may adopt rules regarding the delegation of review authority to divisions of
11 local government."

12

13 **Section 91.** Section 75-6-131, MCA, is amended to read:

14 **"75-6-131. Rules for regional public water supply systems.** The ~~board~~department shall adopt
15 rules for approval of regional public water supply systems established by a regional water authority pursuant to
16 Title 75, chapter 6, part 3. The rules must:

17 (1) include procedures for the construction of regional public water supply systems, including
18 regulatory provisions for a series of project segments over the construction period of the project as contained in
19 the final engineering report, as may be amended and approved by the United States bureau of reclamation, that
20 addresses the:

21 (a) approval of design and construction standards that may not be subject to change for 72 months;

22 (b) issuance of deviations from design and construction standards to remain in effect for 72 months;

23 and

24 (c) approval of an individual regional water supply system's standard construction contract documents
25 and provisions for amendments to those documents to remain in effect for the construction period of the project;

26 (2) implement plan and specification review periods or deviation request approval periods for storage,
27 pumping, and distribution portions of a regional public water supply system of not more than 40 calendar days
28 for the initial review by the department and not more than 20 working days for any subsequent reviews;

(3) avoid duplicate processes and regulations by coordinating and incorporating the review and approval process applicable to a regional public water supply system by the United States bureau of reclamation."

Section 92. Section 75-10-103, MCA, is amended to read:

"75-10-103. Definitions. Unless the context clearly requires otherwise, in this part, the following definitions apply:

~~(1) "Board" means the board of environmental review provided for in 2-15-3502.~~

~~(2)~~(1) "Container site" means a solid waste management facility that:

(a) is generally open to the public for the collection of solid waste that is generated by more than one household or firm and that is collected in a refuse container with a total capacity of not more than 50 cubic yards; or

(b) receives waste from waste collection vehicles and:

(i) receives no more than 3,000 tons of waste each year;

(ii) has control measures in place, including onsite staffing, to adequately contain solid wastes and blowing litter on the site and to minimize spills and leakage of liquid wastes; and

(iii) is a site at which a local government unit requires commercial waste haulers to deposit wastes at the site only during hours that the site is staffed.

~~(3)~~(2) "Department" means the department of environmental quality provided for in 2-15-3501.

~~(4)~~(3) "Local government" means a county, incorporated city or town, or solid waste management district organized under the laws of this state.

~~(5)~~(4) "Person" means any individual, firm, partnership, company, association, corporation, city, town, or local governmental entity or any other state, federal, or private entity, whether organized for profit or not.

~~(6)~~(5) "Resource recovery facility" means any facility at which solid waste is processed for the purpose of extracting, converting to energy, or otherwise separating and preparing solid waste for reuse.

~~(7)~~(6) (a) "Solid waste" means all putrescible and nonputrescible wastes, including but not limited to garbage, rubbish, refuse, ashes, sludge from sewage treatment plants, water supply treatment plants, or air pollution control facilities; construction and demolition wastes; dead animals, including offal; discarded home

1 and industrial appliances; and wood products or wood byproducts and inert materials.

2 (b) Solid waste does not mean municipal sewage, industrial wastewater effluents, mining wastes
3 regulated under the mining and reclamation laws administered by the department, slash and forest debris
4 regulated under laws administered by the department of natural resources and conservation, or marketable
5 byproducts.

6 ~~(8)(7)~~ "Solid waste management system" means any system that controls the storage, treatment,
7 recycling, recovery, or disposal of solid waste. For the purposes of this definition, a container site is not a
8 component of a solid waste management system.

9 ~~(9)(8)~~ "State solid waste management and resource recovery plan" means the statewide plan
10 formulated by the department as authorized by this part."
11

12 **Section 93.** Section 75-10-104, MCA, is amended to read:

13 **"75-10-104. Duties of department.** The department shall:

14 (1) prepare, adopt, and implement a state solid waste management and resource recovery plan as
15 required by 75-10-111 and 75-10-807;

16 (2) ~~prepare-adopt~~ rules necessary for the implementation of this part ~~for submission to the board,~~
17 including but not limited to rules:

18 (a) governing the submission of plans for a solid waste management system;

19 (b) (i) establishing, for the purpose of determining the tonnage or volume-based solid waste
20 management fee that a facility is subject to under 75-10-115(1)(c), methods for determining or estimating the
21 amount of solid waste incinerated or disposed of at a facility; and

22 (ii) governing the application fee, flat annual license renewal fee, and tonnage or volume-based
23 renewal fee for solid waste management systems;

24 (c) establishing the license application fee that a facility is subject to under 75-10-115(1)(a);

25 (d) establishing the flat annual license renewal fee that a facility is subject to under 75-10-115(1)(b);

26 (e) establishing the tonnage or volume-based annual renewal fee that a facility is subject to under 75-
27 10-115(1)(c); and

28 (f) providing procedures for the quarterly collection of the solid waste management fee provided for in

1 75-10-204(6);

2 (3) provide technical assistance to persons within the state for planning, designing, constructing,
3 financing, and operating:

4 (a) a solid waste management system in order to ensure that the system conforms to the state plan;

5 (b) integrated waste management programs; and

6 (c) collection, disposal, reduction, and educational programs for household hazardous waste and
7 small quantities of hazardous waste that are exempt from regulation under Title 75, chapter 10, part 4;

8 (4) enforce and administer the provisions of this part;

9 (5) approve plans for a proposed solid waste management system submitted by a local government;

10 and

11 (6) serve as a clearinghouse for information on waste reduction and reuse, recycling technology and
12 markets, composting, and household hazardous waste disposal, including chemical compatibility."

13

14 **Section 94.** Section 75-10-112, MCA, is amended to read:

15 **"75-10-112. Powers and duties of local government.** A local government may:

16 (1) plan, develop, and implement a solid waste management system consistent with the state's solid
17 waste management and resource recovery plan and propose modifications to the state's solid waste
18 management and resource recovery plan;

19 (2) upon adoption of the state plan ~~by the board~~, pass an ordinance or resolution to exempt the local
20 jurisdiction from complying with the state plan and subsequent rules implementing the state plan. The
21 ordinance or resolution must include a means to provide solid waste disposal to the citizens of the jurisdiction
22 as required in part 2 of this chapter.

23 (3) employ appropriate personnel to carry out the provisions of this part;

24 (4) purchase, rent, or execute leasing agreements for equipment and material necessary for the
25 implementation of a solid waste management system;

26 (5) cooperate with and enter into agreements with any persons in order to implement an effective
27 solid waste management system;

28 (6) receive gifts, grants, or donations or acquire by gift, deed, or purchase land necessary for the

1 implementation of any provision of this part;

2 (7) enforce the rules of the department or a local board of health pertaining to solid waste

3 management through the appropriate county attorney;

4 (8) apply for and utilize state, federal, or other available money for developing or operating a solid
5 waste management system;

6 (9) borrow from any lending agency funds available for assistance in planning a solid waste
7 management system;

8 (10) finance a solid waste management system by:

9 (a) subject to 15-10-420, fixing the assessment of a tax as authorized by state law; and

10 (b) as provided in 7-13-4108, fixing and collecting by ordinance or resolution the rates, rentals, and
11 charges for a solid waste management system on system customers;

12 (11) sell on an installment sales contract or lease to a person all or a portion of a solid waste
13 management system that the local government plans, designs, or constructs for the consideration and upon the
14 terms established by the local governments and consistent with the loan requirements set forth in this part and
15 rules adopted to implement this part;

16 (12) procure insurance against any loss in connection with property, assets, or activities;

17 (13) mortgage or otherwise encumber all or a portion of a solid waste management system when the
18 local government finds that the action is necessary to implement the purposes of this part, as long as the action
19 is consistent with the loan requirements set forth in this part and rules adopted to implement this part;

20 (14) hold or dispose of real property and, subject to agreements with lessors and lessees, develop or
21 alter the property by making improvements or betterments for the purpose of enhancing the value and
22 usefulness of the property;

23 (15) finance, design, construct, own, and operate a solid waste management system or contract for
24 any or all of the powers authorized under this part;

25 (16) control the disposition of solid waste generated within the jurisdiction of the local government,
26 except that, in the absence of an imminent threat to public health, safety, or the environment, a local
27 government may not adopt a flow control or similar ordinance to require use of a specific transfer station or
28 landfill for disposal of solid waste;

(17) enter into long-term contracts with local governments and private entities for:

(a) financing, designing, constructing, and operating a solid waste management system;

(b) marketing all raw or processed material recovered from solid waste;

(c) marketing energy products or byproducts resulting from processing or utilization of solid waste;

(18) finance an areawide solid waste management system through the use of any of the sources of revenue available to the implementation entity for public works projects, by the use of revenue bonds issued by the city or county, or by fees levied by a solid waste management district, whichever is appropriate;

(19) enter into interlocal agreements in order to achieve and implement the powers enumerated in this part;

(20) regulate the siting and operation of container sites."

Section 95. Section 75-10-115, MCA, is amended to read:

"75-10-115. Solid waste management fee. (1) The department may ~~prepare-adopt~~ adopt rules for adoption ~~by the board~~, pursuant to 75-10-104 and ~~75-10-106~~, that set fees for the management and regulation of solid waste at facilities subject to regulation pursuant to part 2 of this chapter. Upon adoption ~~by the board~~, the department may collect the fees. These fees may include:

(a) a license application fee that reflects the cost of reviewing a new solid waste management system or a substantial change to an existing facility from the time an application is made until the license is issued or denied;

(b) a flat annual license renewal fee that reflects a minimal base fee related to the fixed costs of an annual inspection and license renewal. The initial annual fee year for a new facility commences on the date that the facility initially receives waste. The fee must be based upon the categorization of solid waste management systems into separate classes identified by the following criteria:

(i) the quantity of solid waste received by the solid waste management system;

(ii) the nature of the solid waste received; and

(iii) the nature of the waste management occurring within the solid waste management system.

(c) a tonnage or volume-based fee on solid waste disposal.

(2) All fees collected must be deposited in the solid waste management account provided for in 75-

1 10-117."

2

3 **Section 96.** Section 75-10-203, MCA, is amended to read:

4 **"75-10-203. Definitions.** Unless the context requires otherwise, in this part, the following definitions
5 apply:

6 ~~(1)~~ "Board" means the board of environmental review provided for in ~~2-15-3502~~.

7 ~~(2)~~(1) "Department" means the department of environmental quality provided for in 2-15-3501.

8 ~~(3)~~(2) "Dispose" or "disposal" means the discharge, injection, deposit, dumping, spilling, leaking, or
9 placing of any solid waste into or onto the land so that the solid waste or any constituent of it may enter the
10 environment or be emitted into the air or discharged into any waters, including ground water.

11 ~~(4)~~(3) "Household hazardous waste" means products commonly used in the home that due to
12 corrosivity, ignitability, reactivity, toxicity, or other chemical or physical properties are dangerous to human
13 health or the environment. Household hazardous waste includes but is not limited to cleaning, home
14 maintenance, automobile, personal care, and yard maintenance products.

15 ~~(5)~~(4) "Household waste" means any solid waste derived from households, including single and
16 multiple residences, hotels, and motels, crew quarters, and campgrounds and other public recreation and public
17 land management facilities.

18 ~~(6)~~(5) (a) "Municipal solid waste landfill" means any publicly or privately owned landfill or landfill unit
19 that receives household waste or other types of waste, including commercial waste, nonhazardous sludge, and
20 industrial solid waste.

21 (b) The term does not include land application units, surface impoundments, injection wells, or waste
22 piles.

23 ~~(7)~~(6) "Person" means an individual, firm, partnership, company, association, corporation, city, town,
24 local governmental entity, or any other governmental or private entity, whether organized for profit or not.

25 ~~(8)~~(7) "Resource recovery" means the recovery of material or energy from solid waste.

26 ~~(9)~~(8) "Resource recovery facility" means a facility at which solid waste is processed for the purpose
27 of extracting, converting to energy, or otherwise separating and preparing solid waste for reuse.

28 ~~(10)~~(9) "Resource recovery system" means a solid waste management system that provides for the

1 collection, separation, recycling, or recovery of solid wastes, including disposal of nonrecoverable waste
2 residues.

3 ~~(11)~~(10) (a) "Solid waste" means all putrescible and nonputrescible wastes, including but not limited to
4 garbage; rubbish; refuse; ashes; sludge from sewage treatment plants, water supply treatment plants, or air
5 pollution control facilities; construction and demolition wastes; dead animals, including offal; discarded home
6 and industrial appliances; and wood products or wood byproducts and inert materials.

7 (b) Solid waste does not mean municipal sewage, industrial wastewater effluents, mining wastes
8 regulated under the mining and reclamation laws administered by the department of environmental quality,
9 slash and forest debris regulated under laws administered by the department of natural resources and
10 conservation, or marketable byproducts.

11 ~~(12)~~(11) "Solid waste management system" means a system that controls the storage, treatment,
12 recycling, recovery, or disposal of solid waste. For the purposes of this definition, a container site, as defined in
13 75-10-103, is not a component of a solid waste management system.

14 ~~(13)~~(12) "Storage" means the actual or intended containment of wastes, either on a temporary basis or
15 for a period of years.

16 ~~(14)~~(13) "Transport" means the movement of wastes from the point of generation to any intermediate
17 points and finally to the point of ultimate storage or disposal.

18 ~~(15)~~(14) "Treatment" means a method, technique, or process, including neutralization, designed to
19 change the physical, chemical, or biological character or composition of any solid waste so as to neutralize the
20 waste or so as to render it safer for transport, amenable for recovery, amenable for storage, or reduced in
21 volume.

22 ~~(16)~~(15) "Waste tire" means a tire that is no longer suitable for its original intended purpose because of
23 wear, damage, or defect."

24

25 **Section 97.** Section 75-10-206, MCA, is amended to read:

26 **"75-10-206. Variance.** (1) A person may apply to the ~~board~~department for a variance from rules
27 adopted ~~by the department~~ pursuant to 75-10-204, except for rules adopted pursuant to 75-10-204(6). The
28 ~~board~~department may grant a variance if it finds that:

1 (a) failure to comply with the rules does not result in a danger to public health or safety; or

2 (b) compliance with the rules from which a variance is sought would produce hardship without
3 producing benefits to the health and safety of the public that outweigh the hardship.

4 (2) A variance may not be granted pursuant to this section except after a hearing pursuant to the
5 Montana Administrative Procedure Act and consideration by the ~~board~~department of the relative interests of
6 the applicant and owners of the property likely to be affected by the waste disposal system under consideration.

7 (3) This section may not be construed as relieving the ~~board~~department from the obligation to comply
8 with the Resource Conservation and Recovery Act of 1976, as amended, or as allowing the ~~board~~department
9 to grant a variance less restrictive than that act."

10
11 **Section 98.** Section 75-10-221, MCA, is amended to read:

12 **"75-10-221. License required -- application.** (1) Except as provided in 75-10-214, a person may not
13 dispose of solid waste or operate a solid waste management system without a license from the department.

14 (2) The department shall provide application forms for a license as provided in this part.

15 (3) The application must contain the name and business address of the applicant, the location of the
16 proposed solid waste management system, a plan of operation and maintenance, and other information that the
17 department may by rule require.

18 (4) The license provided for in this section is for a period not to exceed 12 months unless renewed by
19 the department.

20 (5) The department may require submission of a new application if the department determines that
21 the plan of operation, the management of the solid waste system, or the geological or ground water conditions
22 have changed since the license was initially approved.

23 (6) In preparing rules ~~for board adoption~~ that establish fees for licenses and the review of applications
24 pursuant to 75-10-104(2), the department shall consider the tonnage or volume of waste to be managed and
25 the size of the proposed solid waste management system. The fees adopted ~~by the board~~ must encourage
26 reduction in the tonnage or volume of waste to be managed and cover the costs to the department of initially
27 reviewing and annually licensing the solid waste management system."

1 **Section 99.** Section 75-10-223, MCA, is amended to read:

2 **"75-10-223. Refusal by local health officer -- appeal to ~~board~~ department.** (1) The local health
3 officer may refuse to validate a license issued under this part only upon a finding that the requirements of this
4 part and the rules implementing this part cannot be satisfied. If the local health officer refuses to validate the
5 license, the local health officer shall notify the applicant, the department, and any other interested person in
6 writing.

7 (2) The applicant or any person aggrieved by the decision of the local health officer not to validate a
8 license may appeal the decision to the ~~board~~ department within 30 days after receiving written notice of the
9 local health officer's decision.

10 (3) The hearing ~~before the board~~ must be held pursuant to the contested case provisions of the
11 Montana Administrative Procedure Act."

12
13 **Section 100.** Section 75-10-224, MCA, is amended to read:

14 **"75-10-224. Revocation or denial of license by department.** The department may deny or revoke a
15 license to operate a solid waste management system after giving the applicant and the local health officer
16 written notice and an opportunity for a hearing before the ~~board~~ department. The decision to deny or revoke a
17 license may be made only after a finding that a solid waste management system cannot be operated or is not
18 being operated in compliance with this part or a rule or order issued pursuant to this part. The hearing ~~held~~
19 ~~before the board~~ on a denial or revocation ~~shall~~ must be held pursuant to the provisions of the Montana
20 Administrative Procedure Act."

21
22 **Section 101.** Section 75-10-227, MCA, is amended to read:

23 **"75-10-227. Administrative enforcement.** (1) When the department believes that a violation of part 1
24 or this part, a violation of a rule adopted under part 1 or this part, a violation of an order issued under this part,
25 or a violation of a permit provision has occurred, it may serve written notice of the violation on the alleged
26 violator or the violator's agent. The notice must specify the provision of law, rule, or permit alleged to be violated
27 and the facts alleged to constitute a violation and may include an order to take necessary corrective action
28 within a reasonable period of time stated in the order, an order assessing an administrative penalty pursuant to

75-10-228, or both. The order becomes final unless, within 30 days after the notice is served, the person named requests in writing a hearing before the ~~board~~ department. On receipt of the request, the ~~board~~ department shall schedule a hearing. Service by mail is complete on the date of mailing.

(2) If, after a hearing held under subsection (1), the ~~board~~ department finds that a violation has occurred, it shall either affirm or modify the ~~department's~~ order. An order issued by the department ~~or by the board~~ may prescribe the date by which the violation must cease and may prescribe time limits for particular action. If, after a hearing, the ~~board~~ department finds that a violation has not occurred, it shall rescind the ~~department's~~ order.

(3) Instead of issuing an order pursuant to subsection (1), the department may either:

(a) require the alleged violator to appear before the ~~board~~ department for a hearing at a time and place specified in the notice and answer the charges; or

(b) initiate action under part 1 or this part.

(4) This section does not prevent the ~~board~~ or department from making efforts to obtain voluntary compliance through warning, conference, or any other appropriate means.

(5) The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing held under this section."

Section 102. Section 75-10-403, MCA, is amended to read:

"75-10-403. Definitions. Unless the context requires otherwise, in this part, the following definitions apply:

~~(1) "Board" means the board of environmental review provided for in 2-15-3502.~~

~~(2)~~(1) "Department" means the department of environmental quality provided for in 2-15-3501.

~~(3)~~(2) "Dispose" or "disposal" means the discharge, injection, deposit, dumping, spilling, leaking, or placing of any hazardous waste into or onto the land or water so that the hazardous waste or any constituent of the hazardous waste may enter the environment or be emitted into the air or discharged into any waters, including ground water.

~~(4)~~(3) "Environmental protection law" means a law contained in or an administrative rule adopted pursuant to Title 75, chapter 2, 5, 10, or 11.

~~(5)~~(4) "Facility" or "hazardous waste management facility" means all contiguous land and structures, other appurtenances, and improvements on the land used for treating, storing, or disposing of hazardous waste. A facility may consist of several treatment, storage, or disposal operational units.

~~(6)~~(5) "Generation" means the act or process of producing waste material.

~~(7)~~ (6) "Generator" means any person, by site, whose act or process produces hazardous waste or whose act first causes a hazardous waste to become subject to regulation under this part.

~~(8)~~(7) (a) "Hazardous waste" means a waste or combination of wastes that, because of its quantity, concentration, or physical, chemical, or infectious characteristics, may:

(i) cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness; or

(ii) pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of or otherwise managed.

(b) Hazardous wastes do not include those substances governed by Title 82, chapter 4, part 2.

~~(9)~~(8) "Hazardous waste management" means the management of the collection, source separation, storage, transportation, processing, treatment, recovery, and disposal of hazardous wastes.

~~(10)~~(9) "Hazardous waste transfer facility" means any land, structure, or improvement, including loading docks, parking areas, holding sites, and other similar areas, used for the transfer and temporary storage of hazardous wastes and where shipments of hazardous waste are temporarily held for a period of 10 days or less during the normal course of transportation up to but not including the point of ultimate treatment, storage, or disposal.

~~(11)~~(10) "Manifest" means the shipping document that is originated and signed by the generator and that is used to identify the hazardous waste and its quantity, origin, and destination during its transportation.

~~(12)~~(11) "Person" means the United States, an individual, firm, trust, estate, partnership, company, association, corporation, city, town, local governmental entity, or any other governmental or private entity, whether organized for profit or not.

~~(13)~~(12) "Remediation waste" means, for the purposes of fee assessment only, all hazardous waste, debris, and media, including ground water, surface water, soils, and sediments, that are managed for implementing cleanup.

~~(14)~~(13) "Storage" means the actual or intended containment of hazardous wastes, either on a temporary basis or for a period of years.

~~(15)~~(14) "Transportation" means the movement of hazardous wastes from the point of generation to any intermediate points and finally to the point of ultimate storage or disposal.

~~(16)~~(15) "Transporter" means a person engaged in the offsite transportation of hazardous waste by air, rail, highway, or water.

~~(17)~~(16) "Treatment" means a method, technique, or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any hazardous waste so as to neutralize the waste or so as to render it nonhazardous, safer for transportation, amenable for recovery, amenable for storage, or reduced in volume.

~~(18)~~(17) "Used oil" means any oil that has been refined from crude oil or any synthetic oil, either of which has been used and as a result of that use is contaminated by physical or chemical impurities."

Section 103. Section 75-10-406, MCA, is amended to read:

"75-10-406. Permits. (1) A person may not construct or operate a hazardous waste management facility without first obtaining a permit from the department for the facility, except that the department may, by rule, prescribe conditions under which specified hazardous wastes or specified quantities of hazardous waste may be disposed of at solid waste disposal sites licensed by the department pursuant to Title 75, chapter 10, part 2.

(2) Any person who wishes to construct or operate a hazardous waste management facility shall apply to the department for a permit on forms provided by the department. An application must contain, at a minimum, the name and business address of the applicant, the location of the proposed facility, a plan of operation and maintenance, and a description of pertinent site characteristics.

(3) A permit may be issued for a period specified by the department and is subject to renewal by the department upon a showing that the facility has been operated in accordance with the terms of the permit and the rules applicable to the facility and in compliance with the provisions of this part and any applicable order of the ~~board~~ or department.

(4) Any permit issued is subject to revocation by the department for failure of the permittee to comply

1 with the terms and conditions of the permit, the department rules, an order of ~~the board or the~~ department, or
2 the provisions of this part. Any person who is denied a permit by the department or who has a permit revoked
3 or modified ~~shall~~ must be afforded an opportunity for a hearing before the ~~board~~ department upon written
4 application made within 30 days after service of notice of denial, revocation, or modification by mail. Service by
5 mail is complete upon mailing.

6 (5) Notwithstanding any other provisions of this part, the department may, in the event of an imminent
7 and substantial danger to public health or the environment, issue a temporary emergency permit to any person
8 for treatment, storage, or disposal of hazardous waste or to any facility to handle hazardous waste not covered
9 by the existing facility permit. Emergency permits may be oral or written, may not exceed 90 days in duration,
10 and may be terminated by the department at any time prior to 90 days.

11 (6) The department may, as it considers appropriate, grant permits by rule to classes or categories of
12 hazardous waste management facilities where the facility owner or operator is already licensed or permitted by
13 the department pursuant to other state environmental statutes or where an interim period exists until final
14 administrative disposition of a permit application is made.

15 (7) In permits issued under this section, the department shall require corrective action for all releases
16 of hazardous waste or constituents at a treatment, storage, or disposal facility, including corrective action for
17 releases that extend beyond the facility boundaries if necessary to protect public health or the environment. A
18 permit must contain a schedule of compliance for corrective action and requirements for assurance of financial
19 responsibility for completion of the corrective action.

20 (8) Each permit issued by the department to a person owning or operating a facility must contain the
21 terms and conditions the department considers necessary to protect human health and the environment."
22

23 **Section 104.** Section 75-10-408, MCA, is amended to read:

24 **"75-10-408. Variances -- renewals.** (1) A person who is a generator or transporter of hazardous
25 wastes or who owns or operates a hazardous waste management facility may apply to the ~~board~~ department
26 for a variance or partial variance from the application of or compliance with any requirement of this part or any
27 rule adopted under this part. The ~~board~~ department may grant a variance or partial variance if it finds that:

28 (a) the applicant's actions or proposed actions regarding generation, transportation, treatment,

1 storage, or disposal of hazardous wastes do not constitute a danger to public health or safety or cause
2 substantially adverse environmental effects; and

3 (b) the application of or compliance with the requirement or rule would produce unreasonable
4 hardship without equal or greater benefits to the public.

5 (2) No variance or partial variance may be granted except after public hearing on due notice and until
6 the ~~board has considered~~ department considers the relative interests of the applicant, other persons specifically
7 affected, and the general public.

8 (3) No variance or partial variance may be granted for a period to exceed 1 year, but the variance or
9 partial variance may be renewed for like periods if no complaint is made to the ~~board~~ department because of it
10 or if, after the complaint has been made and duly considered at a public hearing held by the ~~board~~ department
11 on due notice, the ~~board~~ department finds that renewal is justified. No renewal may be granted except on
12 application ~~therefor~~ for renewal. An application for renewal ~~shall~~ must be made in the manner and upon ~~such~~
13 notice as specified in rules promulgated under this part. A renewal pursuant to this subsection ~~shall~~ must be on
14 the same grounds and subject to the same limitations and requirements as provided in subsection (1).

15 (4) A variance, partial variance, or renewal ~~thereof~~ is not a right of the applicant or holder ~~thereof~~ of
16 the variance, partial variance, or renewal but ~~shall~~ must be granted at the discretion of the ~~board~~ department.
17 However, a person adversely affected by a variance, partial variance, or renewal granted by the ~~board~~
18 department may obtain judicial review ~~thereof~~ as provided by the judicial review of contested case provisions of
19 the Montana Administrative Procedure Act.

20 (5) Nothing in this section and no variance, partial variance, or renewal granted pursuant to this
21 section may be construed to prevent or limit the application of the emergency provisions and procedures of 75-
22 10-415.

23 (6) Under no conditions may a variance be granted by the ~~board~~ department that would result in a
24 less stringent requirement or degree of control than would be imposed by the applicable federal regulations
25 adopted under the federal Resource Conservation and Recovery Act."

26
27 **Section 105.** Section 75-10-409, MCA, is amended to read:

28 **"75-10-409. Compliance monitoring and reporting.** (1) The department may, as a condition of a

1 permit, require the owner or operator of a facility to install equipment, collect and analyze samples, and
2 maintain records in order to monitor and demonstrate compliance with this part, rules adopted under this part,
3 any order of the ~~board or~~ department, and permit conditions.

4 (2) The department may require the owner or operator of a facility to submit reports on the
5 compliance monitoring activities, including notice to the department of any noncompliance with permit
6 conditions, rules adopted under this part, the provisions of this part, or any orders of the department or ~~board~~."

7
8 **Section 106.** Section 75-10-413, MCA, is amended to read:

9 **"75-10-413. Administrative enforcement.** (1) When the department believes that a violation of this
10 part, a rule adopted under this part, or a permit provision has occurred, it may serve written notice of the
11 violation personally or by certified mail on the alleged violator or the violator's agent. The notice must specify
12 the provision of this part, the rule, or the permit provision alleged to be violated and the facts alleged to
13 constitute a violation and may include an order to take necessary corrective action within a reasonable period of
14 time stated in the order. The order becomes final unless, within 30 days after the notice is served, the person
15 named requests, in writing, a hearing before the ~~board~~ department. On receipt of the request, the ~~board~~
16 department shall schedule a hearing. Service by mail is complete on the date of mailing.

17 (2) If, after a hearing held under subsection (1), the ~~board~~ department finds that a violation has
18 occurred, it shall either affirm or modify the ~~department's~~ order. An order issued by the department or ~~by the~~
19 ~~board~~ may prescribe the date by which the violation must cease and may prescribe time limits for particular
20 action. If, after hearing, the ~~board~~ department finds that a violation has not occurred, it shall rescind the
21 ~~department's~~ order.

22 (3) In addition to or instead of issuing an order pursuant to subsection (1), the department may:

23 (a) require the alleged violator to appear before the ~~board or~~ department, by subpoena or subpoena
24 duces tecum, for a hearing at a time and place specified in the notice to answer the charges complained of or to
25 provide information regarding the alleged violation or its actual or potential impact on public health and welfare
26 or the environment; or

27 (b) initiate action under 75-10-414, 75-10-417, or 75-10-418.

28 (4) In the case of disobedience of any subpoena issued and served under this section or of the

1 refusal of any witness to testify as to any material matter with regard to which the witness may be interrogated
2 in a hearing or investigation before ~~the board or the department~~, the ~~board or~~ department may apply to any
3 district court in the state for an order to compel compliance with the subpoena or the giving of testimony. The
4 court shall hear the matter as expeditiously as possible. If the disobedience or refusal is found to be unjustified,
5 the court shall enter an order requiring compliance. Disobedience of the order is punishable by contempt of
6 court in the same manner and by the same procedures as is provided for like conduct committed in the course
7 of civil actions in district court.

8 (5) This section does not prevent the ~~board or~~ department from making efforts to obtain voluntary
9 compliance through warning, conference, or any other appropriate means."
10

11 **Section 107.** Section 75-10-414, MCA, is amended to read:

12 **"75-10-414. Injunctions.** The department may institute and maintain in the name of the state actions
13 for injunctive relief as provided in Title 27, chapter 19, to:

14 (1) immediately restrain any person from engaging in any unauthorized activity which is endangering
15 or causing damage to public health or the environment;

16 (2) enjoin a violation of this part, a rule adopted under this part, an order of the department ~~or the~~
17 ~~board~~, or a permit provision without the necessity of prior revocation of the permit; or

18 (3) require compliance with this part, a rule adopted under this part, an order of the department ~~or the~~
19 ~~board~~, or a permit provision."
20

21 **Section 108.** Section 75-10-417, MCA, is amended to read:

22 **"75-10-417. Civil penalties.** (1) A person who violates any provision of this part, a rule adopted under
23 this part, an order of the department ~~or the board~~, or a permit is subject to a civil penalty not to exceed \$10,000
24 for each violation. Each day of violation constitutes a separate violation. Penalties assessed under this section
25 must be determined in accordance with the penalty factors in 75-1-1001.

26 (2) The department may institute and maintain in the name of the state any enforcement proceedings
27 under this section. Upon request of the department, the attorney general or the county attorney of the county of
28 violation shall petition the district court to impose, assess, and recover the civil penalty. An action to recover

penalties must be brought in the district court of the county in which the violation occurred or, if mutually agreed on by the parties in the action, in the district court of the first judicial district, Lewis and Clark County.

(3) Action under this section does not bar:

(a) enforcement of this part, rules adopted under this part, orders of the department ~~or the board~~, or permits by injunction or other appropriate remedy; or

(b) action under 75-10-418.

(4) Money collected under this section must be deposited in the state general fund."

Section 109. Section 75-10-418, MCA, is amended to read:

"75-10-418. Criminal penalties. (1) A person is guilty of an offense under this section if the person knowingly:

(a) transports any hazardous waste to an unpermitted facility;

(b) treats, stores, or disposes of hazardous waste subject to regulation under this part or the rules adopted under this part without a permit or contrary to a material permit condition;

(c) omits material information or makes any false statement or representation in any application, label, manifest, record, report, permit, or other document filed, maintained, or used for compliance with provisions of this part or rules adopted under this part pertaining to the handling of hazardous waste;

(d) generates, stores, treats, transports, disposes of, or otherwise handles any used oil or hazardous waste regulated under this part or rules adopted under this part and knowingly destroys, alters, conceals, or fails to file any record, application, manifest, report, or other document required to be maintained or filed in compliance with the provisions of this part, an order issued under this part, or rules adopted under this part; or

(e) transports or causes to be transported without a manifest any hazardous waste required to be accompanied by a manifest.

(2) A person who is guilty of an offense under subsection (1) is subject to a fine of not more than \$25,000 per violation or imprisonment for a period not to exceed 3 years, or both. Each day of violation constitutes a separate violation.

(3) A person who knowingly violates any requirement of this part or any rule or material permit condition issued pursuant to this part (except those violations specified in subsection (1)) regarding any

hazardous waste that is subject to regulation is guilty of an offense and subject to a fine of up to \$5,000 per violation or subject to imprisonment not to exceed 6 months, or both. Each day of violation constitutes a separate violation.

(4) Upon a second conviction for a violation of this section, the maximum penalties specified in this section must be doubled.

(5) Action under this section does not bar enforcement of this part, rules made under this part, orders of the department ~~or the board~~, or permits by injunction or other appropriate remedy.

(6) Money collected under this section, except money collected in a justice's court, must be deposited in the state general fund."

Section 110. Section 75-10-424, MCA, is amended to read:

"75-10-424. Administrative penalty. (1) The department may assess a person who violates a provision of this part or a rule adopted under this part an administrative penalty, not to exceed \$10,000 for each violation. Each day of violation constitutes a separate violation, but the maximum penalty may not exceed \$100,000 for any related series of violations. Assessment of an administrative penalty under this section must be made in conjunction with an order or administrative action authorized by this chapter.

(2) An administrative penalty may not be assessed under this section unless the alleged violator is given notice and opportunity for a hearing before the ~~board~~ department pursuant to Title 2, chapter 4, part 6.

(3) In determining the appropriate amount of an administrative penalty, the department shall consider the penalty factors in 75-1-1001.

(4) If the department is unable to collect the administrative penalty or if a person fails to pay all or any portion of the administrative penalty as determined by the department, the department may file an action to recover the amount not paid. The action must be brought in the district court of the county in which the violation occurred or, if mutually agreed on by the parties in the action, in the district court of the first judicial district, Lewis and Clark County.

(5) Action under this section does not bar action under 75-10-413 through 75-10-418 or any other appropriate remedy.

(6) Administrative penalties collected under this section must be deposited in the state general fund."

1

2 **Section 111.** Section 75-10-501, MCA, is amended to read:3 **"75-10-501. (Temporary) Definitions.** Unless the context requires otherwise, in this part, the
4 following definitions apply:5 ~~(1)~~ ~~"Board" means the board of environmental review provided for in 2-15-3502.~~6 ~~(2)~~(1) "Component part" means any identifiable part of a discarded, ruined, wrecked, or dismantled
7 motor vehicle, including but not limited to fenders, doors, hoods, engine blocks, motor parts, transmissions,
8 frames, axles, wheels, tires, and passenger compartment fixtures.9 ~~(3)~~(2) "Department" means the department of environmental quality provided for in 2-15-3501.10 ~~(4)~~(3) "Junk mobile home" means a mobile home as defined in 15-24-201 that is wrecked, ruined,
11 dismantled, or abandoned and is no longer fit for human habitation.12 ~~(5)~~(4) "Junk nonmotorized vehicle" means an inoperative vehicle that is not constructed with a motor
13 and that is discarded, ruined, wrecked, or dismantled.14 ~~(6)~~(5) (a) "Junk vehicle" means a motor vehicle, including component parts:

15 (i) that is discarded, ruined, wrecked, or dismantled;

16 (ii) that, except as provided in subsection ~~(6)(b)~~ (5)(b), is not lawfully and validly licensed; and

17 (iii) that remains inoperative or incapable of being driven.

18 (b) If a vehicle is permanently registered under 61-3-562 and meets the criteria for a junk vehicle
19 under subsection ~~(6)(a)~~, (5)(a), the vehicle is a junk vehicle.20 ~~(7)~~(6) "Motor vehicle graveyard" means a collection point established by a county for junk motor
21 vehicles prior to their disposal.22 ~~(8)~~(7) (a) "Motor vehicle wrecking facility" means:23 (i) a facility buying, selling, or dealing in four or more vehicles a year, of a type required to be
24 licensed, for the purpose of wrecking, dismantling, disassembling, or substantially changing the form of the
25 motor vehicle; or26 (ii) a facility that buys or sells component parts, in whole or in part, and deals in secondhand motor
27 vehicle parts. A facility that buys or sells component parts of a motor vehicle, in whole or in part, is a motor
28 vehicle wrecking facility whether or not the buying or selling price is based upon weight or any other type of

1 classification.

2 (b) The term does not include a garage where wrecked or disabled motor vehicles are temporarily
3 stored for a reasonable period of time for inspection, repairs, or subsequent removal to a junkyard.

4 ~~(9)(8)~~ "Person" means any individual, firm, partnership, company, association, corporation, city, town,
5 local governmental entity, or other governmental or private entity, whether organized for profit or not.

6 ~~(10)(9)~~ "Public view" means any point 6 feet above the surface of the center of a public road from
7 which junk vehicles can be seen.

8 ~~(11)(10)~~ "Shielding" means the construction or use of fencing or constructed or natural barriers to
9 conceal junk vehicles from public view. (Terminates June 30, 2021--sec. 5, Ch. 427, L. 2019.)

10 **75-10-501. (Effective July 1, 2021) Definitions.** Unless the context requires otherwise, in this part,
11 the following definitions apply:

12 ~~(1)~~ "Board" means the board of environmental review provided for in 2-15-3502.

13 ~~(2)(1)~~ "Component part" means any identifiable part of a discarded, ruined, wrecked, or dismantled
14 motor vehicle, including but not limited to fenders, doors, hoods, engine blocks, motor parts, transmissions,
15 frames, axles, wheels, tires, and passenger compartment fixtures.

16 ~~(3)(2)~~ "Department" means the department of environmental quality provided for in 2-15-3501.

17 ~~(4)(3)~~ (a) "Junk vehicle" means a motor vehicle, including component parts:

18 (i) that is discarded, ruined, wrecked, or dismantled;

19 (ii) that, except as provided in subsection ~~(4)(b)~~, ~~(3)(b)~~, is not lawfully and validly licensed; and

20 (iii) that remains inoperative or incapable of being driven.

21 (b) If a vehicle is permanently registered under 61-3-562 and meets the criteria for a junk vehicle
22 under subsection ~~(4)(a)~~, ~~(3)(a)~~, the vehicle is a junk vehicle.

23 ~~(5)(4)~~ "Motor vehicle graveyard" means a collection point established by a county for junk motor
24 vehicles prior to their disposal.

25 ~~(6)(5)~~ (a) "Motor vehicle wrecking facility" means:

26 (i) a facility buying, selling, or dealing in four or more vehicles a year, of a type required to be
27 licensed, for the purpose of wrecking, dismantling, disassembling, or substantially changing the form of the
28 motor vehicle; or

(ii) a facility that buys or sells component parts, in whole or in part, and deals in secondhand motor vehicle parts. A facility that buys or sells component parts of a motor vehicle, in whole or in part, is a motor vehicle wrecking facility whether or not the buying or selling price is based upon weight or any other type of classification.

(b) The term does not include a garage where wrecked or disabled motor vehicles are temporarily stored for a reasonable period of time for inspection, repairs, or subsequent removal to a junkyard.

~~(7)~~(6) "Person" means any individual, firm, partnership, company, association, corporation, city, town, local governmental entity, or other governmental or private entity, whether organized for profit or not.

~~(8)~~(7) "Public view" means any point 6 feet above the surface of the center of a public road from which junk vehicles can be seen.

~~(9)~~(8) "Shielding" means the construction or use of fencing or constructed or natural barriers to conceal junk vehicles from public view."

Section 112. Section 75-10-515, MCA, is amended to read:

"75-10-515. Appeals. A decision by the department to issue, deny, or revoke a motor vehicle wrecking facility or graveyard license may be appealed to the ~~board~~ department within 30 days after receipt of official notice of the ~~department's~~ decision."

Section 113. Section 75-10-540, MCA, is amended to read:

"75-10-540. Administrative enforcement. (1) When the department determines that a violation of this part, a violation of a rule adopted or an order issued under this part, or a violation of a license provision has occurred, it may serve written notice of the violation on the alleged violator or the violator's agent. The notice must specify the law, rule, or license provision alleged to be violated and the facts alleged to constitute a violation and may include an order to take necessary corrective action within a reasonable period of time, an order assessing an administrative penalty pursuant to 75-10-542, or both. The order becomes final 30 days after the notice is served unless the person named requests, in writing, a hearing before the ~~board~~ department. On receipt of the request for a hearing, the ~~board~~ department shall schedule a hearing. Service by mail is complete on the date of mailing.

(2) If, after a hearing held under subsection (1), the ~~board~~department finds that a violation has occurred, it shall either affirm or change the ~~department's~~ order. An order may prescribe the date by which the violation must cease and may prescribe time limits for particular action. If, after a hearing, the ~~board~~department finds that a violation has not occurred, it shall rescind the ~~department's~~ order.

(3) The department shall make efforts to obtain voluntary compliance through warning, conference, or any other appropriate means before issuing an order pursuant to subsection (1).

(4) The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing held under this section."

Section 114. Section 75-10-714, MCA, is amended to read:

"75-10-714. Administrative penalties. (1) In lieu of proceeding under 75-10-711(5), the department may assess penalties of not more than \$1,000 a day for each violation against a person liable under 75-10-715(1) for a release or threat of release who has failed or refused to comply with an order issued by the department pursuant to 75-10-711(4) or against a person who has failed or refused to comply with an order issued by the department pursuant to 75-10-707(5).

(2) In determining the amount of any penalty assessed pursuant to this section, the department shall take into account the nature, circumstances, extent, and gravity of the noncompliance and, with respect to the person liable under 75-10-715(1):

- (a) the person's ability to pay;
- (b) any prior history of violations;
- (c) the degree of culpability;
- (d) the economic benefit or savings, if any, resulting from the noncompliance; and
- (e) any other matters that justice may require.

(3) An administrative penalty may not be collected pursuant to this section unless the person charged with the noncompliance is given notice and opportunity for a hearing with respect to the noncompliance. The hearing is before the ~~board of environmental review~~ the department. A hearing may be requested by submitting a written request stating the reason for the request within 30 days after receipt of the notice of penalty assessment.

(4) The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing held under this section.

(5) Administrative penalties collected under this section must be deposited in the environmental quality protection fund established in 75-10-704."

Section 115. Section 75-10-727, MCA, is amended to read:

"75-10-727. Institutional controls. (1) An owner of real property may, with department approval, restrict the use of the owner's real property to mitigate the risk posed to the public health, safety, and welfare and the environment by imposing on the real property, without conveying the property or creating a dominant and servient estate, an appropriate institutional control.

(2) An institutional control restricting present and future real property rights is placed on a property by filing a written instrument evidencing the restrictions to be placed on the use of the property with the county clerk in the county in which the property is located.

(3) An institutional control that restricts real property runs with the land and is binding on all successors in interest to real property until the institutional control is removed.

(4) An institutional control must be removed if there is not an unacceptable risk posed to public health, safety, and welfare and the environment. An owner may request department approval to remove all or a portion of the institutional controls from the real property. The department shall review the request and provide the owner with its decision to approve or deny the request within 120 days from the department's receipt of the request. If the department denies the request, it shall provide the owner with a written explanation of the denial. A department decision to deny the request may be appealed to the ~~board of environmental review~~ department and conducted as a contested case proceeding pursuant to Title 2, chapter 4.

(5) If the department ~~or the board~~ approves an owner's request to remove all or a portion of the institutional controls, the owner shall file the approval with the county clerk in the county in which the real property is located."

Section 116. Section 75-10-732, MCA, is amended to read:

"75-10-732. Eligibility. (1) A facility where there has been a release or threatened release of a

1 hazardous or deleterious substance that may present an imminent and substantial endangerment to the public
2 health, safety, or welfare or the environment may be eligible for voluntary cleanup procedures under this part,
3 except for facilities that meet one of the following criteria at the time of application for a voluntary cleanup plan:

4 (a) a facility that is listed or proposed for listing on the national priorities list pursuant to 42 U.S.C.
5 9601, et seq.;

6 (b) a facility for which an order has been issued or consent decree has been entered into pursuant to
7 this part;

8 (c) a facility that is the subject of an agency order or an action filed in district court by any state
9 agency that addresses the release or threatened release of a hazardous or deleterious substance; or

10 (d) a facility where the release or threatened release of a hazardous or deleterious substance is
11 regulated by the Montana Hazardous Waste Act and regulations under that act; or

12 (e) a facility that is the subject of pending action under this part because the facility has been issued a
13 notice commencing a specified period of negotiations on an administrative order on consent.

14 (2) Notwithstanding the provisions of subsections (1)(b) through (1)(e), the department may agree to
15 accept and may approve an application for a voluntary cleanup plan for a facility.

16 (3) The department may determine that a facility that is potentially eligible for voluntary cleanup
17 exhibits complexities regarding protection of public health, safety, and welfare and the environment and that the
18 complexities should be addressed under an administrative order or consent decree pursuant to this part. This
19 determination may be made only after consultation with any person desiring to conduct a voluntary cleanup at
20 the facility.

21 (4) If an applicant who submits an application for a voluntary cleanup plan disagrees with the
22 department's decision to reject the filing of the application under subsection (1) or (3) or disagrees with the
23 department's decision to disapprove the voluntary cleanup plan submitted pursuant to 75-10-736, the applicant
24 may, within 30 days of receipt of the department's written decision pursuant to 75-10-736, submit a written
25 request for a hearing before the ~~board of environmental review~~ department. In reviewing a department decision
26 to reject an application under subsection (1) or (3) or to disapprove a voluntary cleanup plan submitted
27 pursuant to 75-10-736, the ~~board~~ department shall apply the standards of review specified in 2-4-704. The
28 hearing must be held within 2 months ~~at the regular meeting of the board or~~ at the time mutually agreed to by

1 ~~the board~~, the department, and the applicant. The hearing and any appeals must be conducted in accordance
2 with the contested case proceedings pursuant to Title 2, chapter 4, parts 6 and 7. A hearing ~~before the board~~
3 may not be requested regarding a decision of the department made pursuant to subsection (2)."

4
5 **Section 117.** Section 75-10-736, MCA, is amended to read:

6 **"75-10-736. Approval of voluntary cleanup plan -- time limits -- content of notice -- expiration of**
7 **approval.** (1) The department shall review for completeness, including adequacy and accuracy, in accordance
8 with the requirements of 75-10-734, the environmental assessment component of a voluntary cleanup plan and
9 shall provide a written completeness notice to the applicant within 30 days of receipt. The completeness notice
10 must note all deficiencies identified in the information submitted.

11 (2) Once the department determines that the environmental assessment component of a voluntary
12 cleanup plan is complete, the applicant may submit the remediation proposal component. The department shall
13 review the remediation proposal for completeness, including adequacy and accuracy, in accordance with the
14 requirements of 75-10-734, and shall provide a written completeness notice to the applicant within 30 days of
15 receipt. The completeness notice must note all deficiencies identified in the information submitted.

16 (3) Once the department determines that the application for a voluntary cleanup plan is complete
17 pursuant to subsections (1) and (2), the department shall provide formal written notification of approval or
18 disapproval within 60 days unless the applicant and the department agree to an extension of the review to a
19 date certain. The review must be limited to a review of the materials submitted by the applicant, public
20 comments, and documents or information readily available to the department. The department shall
21 communicate with the applicant during the review period to ensure that the applicant has the opportunity to
22 address the public comments.

23 (4) (a) If the department receives five applications for review of either component of a voluntary
24 cleanup plan in a calendar month, including applications deferred from prior months, the department may notify
25 any additional applicants in that month that their plans must be reviewed in the order received. The 60-day
26 period for department completeness review of deferred applications must begin on the first day of the
27 subsequent month that each plan is eligible for review.

28 (b) The department shall discontinue accepting either component of voluntary cleanup applications

1 when 15 applications are pending and are being reviewed by the department. The department shall establish a
2 waiting list for applications and shall consider the applications in order of submittal.

3 (c) If the department has received multiple applications for a voluntary cleanup at the same facility,
4 the department shall notify all of the applicants and offer them the opportunity to submit a joint application.

5 (5) Consistent with the provisions of 75-10-707, the department may access the facility during review
6 of either component of the application and implementation of the voluntary cleanup plan to confirm information
7 provided by the applicant and verify that the cleanup is being conducted consistent with the approved plan.

8 (6) (a) The department shall approve a voluntary cleanup plan if the department concludes that the
9 plan meets the requirements specified in 75-10-734 and will attain a degree of cleanup and control of
10 hazardous or deleterious substances that complies with the requirements of 75-10-721.

11 (b) Except for the period necessary for the operation and maintenance of the approved remediation
12 proposal, the department may not approve a voluntary remediation proposal that would:

13 (i) take longer than 60 months after department approval to achieve the cleanup levels proposed by
14 the applicant under 75-10-734(3)(a)(i) and approved by the department; or

15 (ii) take longer than 120 months after department approval to achieve the cleanup levels for ground
16 water proposed by the applicant under 75-10-734(3)(a)(i) and approved by the department, including ground
17 water standards identified as applicable or relevant state or federal environmental requirements, criteria, or
18 limitations pursuant to 75-10-721.

19 (7) If a voluntary cleanup plan is not approved by the department, the department shall promptly
20 provide the applicant with a written statement of the reasons for denial. The denial may be appealed to the
21 ~~board of environmental review~~ department in accordance with the provisions of 75-10-732(4).

22 (8) The approval of a voluntary cleanup plan by the department applies only to conditions at the
23 facility that are known to the department at the time of department approval. If a voluntary remediation proposal
24 is not initiated within 12 months and, except for the period necessary for the operation and maintenance of the
25 approved remediation proposal, is not completed within 60 months after approval by the department, the
26 department's approval lapses. However, the department may grant an extension of the time limit for completion
27 of the voluntary cleanup plan.

28 (9) If conditions are discovered during implementation of a voluntary cleanup plan that were not

identified in the environmental assessment component pursuant to subsection (1), affect the risk to public health, safety, or welfare or the environment, and change the scope of the approved plan, the applicant shall notify the department within 10 days of discovery. The department may require the applicant to submit an amendment to the approved plan to address the conditions or may determine that a voluntary cleanup plan is no longer appropriate pursuant to 75-10-732(3).

(10) Departmental approval is void if the applicant or the applicant's agents:

(a) fail to materially comply with the voluntary cleanup plan;

(b) submit materially misleading information in the application or during implementation of the voluntary cleanup plan; or

(c) fail to report any newly discovered information to the department during the application process or implementation of the voluntary cleanup plan regarding releases or threatened releases of hazardous or deleterious substances within 10 days of discovery of that information.

(11) Within 60 days after completion of the approved remediation proposal described in the voluntary cleanup plan approved by the department, the applicant shall provide to the department a certification from a qualified environmental professional that the plan has been fully implemented, including all documentation necessary to demonstrate the successful implementation of the plan, such as confirmation sampling, if necessary.

(12) Except as provided in 75-10-738(2)(b), the department may not require financial assurance under this part for voluntary cleanup plans approved under this section.

(13) If a person who would otherwise not be a liable person under 75-10-715(1) elects to undertake an approved voluntary cleanup plan, the person may not become a liable person under 75-10-715(1) by undertaking a voluntary cleanup if the person materially complies with the voluntary cleanup plan approved by the department pursuant to this section.

(14) Immunity from liability under this section does not apply to a release that is caused by conduct that is negligent or grossly negligent or that constitutes intentional misconduct."

Section 118. Section 75-10-1201, MCA, is amended to read:

"75-10-1201. Definitions. As used in this part, the following definitions apply:

~~(1)~~ "Board" means the board of environmental review provided for in 2-15-3502.

~~(2)~~(1) "Department" means the department of environmental quality provided for in 2-15-3501.

~~(3)~~(2) "Disposal" means the discharge, injection, deposit, dumping, spilling, leaking, or placing of septage into or onto the land or water.

~~(4)~~(3) "Domestic sewage" means waste and wastewater from humans or household operations that are discharged to or otherwise enter a treatment works.

~~(5)~~(4) "Industrial wastewater" means wastewater generated in a commercial or industrial process.

~~(6)~~(5) "Person" means an individual, firm, partnership, association, corporation, city, town, local government entity, or other government or private entity, whether organized for profit or not.

~~(7)~~(6) (a) "Septage" means liquid or solid material removed from a septic tank, cesspool, portable toilet, or similar treatment works that receives only domestic sewage.

(b) Septage does not include material removed from a septic tank, cesspool, or similar treatment works that receives industrial wastewater and does not include grease removed from a grease trap at a restaurant.

~~(8)~~(7) "Treatment works" means a publicly owned or privately owned device or system used to treat, including to recycle and to reclaim, either domestic sewage or a combination of domestic sewage and industrial waste of a liquid nature."

Section 119. Section 75-10-1221, MCA, is amended to read:

"75-10-1221. Department revocation or denial of license. The department may deny or revoke a license after giving the applicant written notice and an opportunity for a hearing ~~before the board~~. The decision to deny or revoke a license may be made only after a finding that a business or disposal site cannot be operated or is not being operated in compliance with this part or a rule or order issued pursuant to this part. The hearing ~~held before the board~~ on a denial or revocation must be held pursuant to the provisions of the Montana Administrative Procedure Act."

Section 120. Section 75-10-1222, MCA, is amended to read:

"75-10-1222. Administrative enforcement. (1) If the department believes that a violation of this part,

1 a rule adopted under this part, or an order issued under this part has occurred, it may serve written notice of the
2 violation, by certified mail, on the alleged violator or the violator's agent. The notice must specify the provision
3 of this part, the rule, or the condition of approval alleged to have been violated and the facts alleged to
4 constitute a violation. The notice must include an order to take necessary corrective action within a reasonable
5 period of time. The time period must be stated in the order. Service is complete on the date of mailing.

6 (2) If the alleged violator does not request a hearing before the ~~board~~ department within 30 days of
7 the date of service, the order is final. Failure to comply with a final order may subject the violator to an action
8 commenced pursuant to 75-10-1221.

9 (3) If the alleged violator requests a hearing ~~before the board~~ within 30 days of the date of service, the
10 ~~board~~ department shall schedule a hearing. After the hearing is held, the ~~board~~ department may:

11 (a) affirm or modify the ~~department's~~ order issued under subsection (1) if the ~~board~~ department finds
12 that a violation has occurred; or

13 (b) rescind the ~~department's~~ order if the ~~board~~ department finds that a violation has not occurred.

14 (4) An order issued by the department ~~or the board~~ may set a date by which the violation must cease
15 and set a time limit for the violator to correct the violation.

16 (5) (a) An action initiated by the department under this section may include an administrative penalty
17 not to exceed \$500 for each day of violation. Administrative penalties collected under this section must be
18 deposited in the account provided for in 75-10-1203.

19 (b) Penalties assessed under this section must be determined in accordance with the penalty factors
20 in 75-1-1001.

21 (6) The contested case provisions of the Montana Administrative Procedure Act, provided for in Title
22 2, chapter 4, part 6, apply to a hearing under this section."

23
24 **Section 121.** Section 75-11-203, MCA, is amended to read:

25 **"75-11-203. Definitions.** As used in this part, unless the context requires otherwise, the following
26 definitions apply:

27 ~~(1) "Board" means the board of environmental review provided for in 2-15-3502.~~

28 ~~(2)(1)~~ "Closure" or "to close" means the process of properly removing or filling in place an

1 underground storage tank that is no longer in service.

2 ~~(3)~~(2) "Department" means the department of environmental quality provided for in 2-15-3501.

3 ~~(4)~~(3) "Inspection" means activities to inspect all or part of an underground storage tank system,
4 including records relating to installation, operation, maintenance, and closure to determine compliance with
5 applicable laws and rules relating to operation and maintenance.

6 ~~(5)~~(4) "Inspector" means an individual who performs inspections of underground storage tank
7 systems.

8 ~~(6)~~ (5) (a) "Installation" or "to install" means the placement of an underground storage tank system,
9 including excavation, tank placement, backfilling, and piping of underground portions of the underground
10 storage tank system that store or convey regulated substances. Installation includes repair or modification of an
11 underground storage tank system through such means as tank relining or the repair or replacement of valves,
12 fillpipes, piping, vents, or in-tank liquid-level monitoring systems. Installation also means installation, repair, or
13 modification of a leak detection device that is external to and not attached to the underground storage tank
14 system and the installation, repair, or modification of a cathodic protection system.

15 (b) The terms do not include the process of conducting a precision (tightness) test to establish the
16 integrity of the underground storage tank system.

17 ~~(7)~~(6) "Installer" means an individual who installs or closes underground storage tank systems.

18 ~~(8)~~ (7) "License" means a license issued by the department under 75-11-204 or 75-11-210 to conduct
19 the inspection, installation, or closure of underground storage tank systems.

20 ~~(9)~~(8) "Licensed inspector" means an individual who holds a valid underground storage tank system
21 inspector license.

22 ~~(10)~~(9) "Licensed installer" means an individual who holds a valid underground storage tank system
23 installer license.

24 ~~(11)~~(10) "Operator" means a person in control of or having responsibility for the operation,
25 maintenance, or management of an underground storage tank system.

26 ~~(12)~~(11) "Owner" means a person who owns an underground storage tank system used for the
27 storage, use, or dispensing of regulated substances.

28 ~~(13)~~(12) "Person" means an individual, firm, trust, estate, partnership, company, association,

corporation (whether organized for profit or not), city, town, local governmental entity, or any other governmental or private entity.

~~(14)~~(13) "Regulated substance" means a regulated substance as defined in 75-11-503.

~~(15)~~(14) "Underground storage tank" or "underground storage tank system" means an underground storage tank, as defined in 75-11-503, and, for purposes of this part, includes ancillary equipment designed to prevent, detect, or contain a release from an underground storage tank system."

Section 122. Section 75-11-211, MCA, is amended to read:

"75-11-211. Denial, modification, suspension, or revocation of installer or inspector license -- grounds. (1) The department may deny, modify, condition, suspend, or revoke a license if the installer or inspector:

- (a) fails to achieve a passing grade on a written examination;
- (b) fails to pay the license fee imposed under this part;
- (c) commits fraud or deceit with respect to the license or permit application or an inspection report submitted to the department;
- (d) has had suspended or revoked:
 - (i) a license issued under this part; or
 - (ii) a similar license in another state or territory; or
- (e) violates any state or federal law, rule, permit, or order relating to the installation or closure of an underground storage tank system.

(2) If the department modifies, conditions, suspends, or revokes a license, it shall inform the applicant or license holder in writing of the reason for the action. The applicant or license holder may request a hearing before the ~~board~~ department. If the ~~board~~ department grants a hearing, the hearing must be held in accordance with the provisions of the Montana Administrative Procedure Act."

Section 123. Section 75-11-218, MCA, is amended to read:

"75-11-218. Administrative enforcement. (1) When the department believes that a person has violated this part, a rule adopted under this part, or a permit provision, it may serve written notice of the violation

1 on the person or the person's agent. The notice must specify the alleged violation and the facts that constitute
2 the alleged violation. The notice may include an order to provide information pertaining to the installation,
3 closure, or inspection, an order to take necessary corrective action within a reasonable time as stated in the
4 order, or an order assessing an administrative penalty pursuant to 75-11-223. A notice and order must be
5 signed by the director of the department or the director's designee and must be served personally or by certified
6 mail upon the person or the person's agent. The order becomes final unless, within 30 days after the notice is
7 served, the person requests in writing a hearing before the ~~board~~ department. On receipt of the request, the
8 ~~board~~ department shall schedule a hearing. Service by mail is complete on the date of mailing.

9 (2) If, pursuant to a hearing held under subsection (1), the ~~board~~ department finds that a violation has
10 occurred, it shall either affirm or modify the ~~department's~~ order. An order issued by the department or the ~~board~~
11 may prescribe the date by which the violation must cease and may prescribe time limits for particular action. If,
12 after a hearing, the ~~board~~ department finds that a violation has not occurred, it shall rescind the ~~department's~~
13 order.

14 (3) In addition to or instead of issuing an order pursuant to subsection (1), the department may either:

15 (a) require the alleged violator to appear before the ~~board~~ department for a hearing at a time and
16 place specified in the notice and answer the charges described in the notice of violation; or

17 (b) initiate action under 75-11-219, 75-11-223, or 75-11-224.

18 (4) This section does not prevent the ~~board~~ or department from attempting to obtain voluntary
19 compliance through issuance of a warning, a conference, or any other appropriate administrative or judicial
20 means.

21 (5) The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4,
22 part 6, apply to a hearing held under this section."

23
24 **Section 124.** Section 75-11-219, MCA, is amended to read:

25 **"75-11-219. Injunctions.** The department may institute and maintain in the name of the state actions
26 for injunctive relief as provided in Title 27, chapter 19, to:

27 (1) immediately restrain any person from engaging in unauthorized activity that is endangering public
28 health or causing damage to the environment;

(2) enjoin a violation of this part, a rule adopted under this part, or an order of the department ~~or the board~~; or

(3) require compliance with this part, a rule adopted under this part, or an order of the department ~~or the board~~."

Section 125. Section 75-11-223, MCA, is amended to read:

"75-11-223. Civil and administrative penalties. (1) (a) A person who violates a provision of this part, a rule adopted under this part, or an order of the department ~~or the board~~ is subject to an administrative penalty not to exceed \$500 for each violation or a civil penalty not to exceed \$10,000 for each violation. If an installer or an inspector who is an employee is in violation, the employer of that installer or that inspector is the entity that is subject to the provisions of this section unless the violation is the result of a grossly negligent or willful act. Each day of violation of this part, a rule adopted under this part, or an order constitutes a separate violation.

(b) Penalties assessed under this subsection (1) must be determined in accordance with the penalty factors in 75-1-1001.

(2) The department may institute and maintain in the name of the state any enforcement proceedings under this section. The enforcement or collection action must be brought in the district court of the county in which the violation occurred or, if mutually agreed upon by the parties, in the district court of the first judicial district, Lewis and Clark County. Upon request of the department, the attorney general or the county attorney of the county where the violation occurred shall petition the district court to impose, assess, and recover the civil penalty.

(3) Action under this section does not bar:

(a) enforcement of this part, rules adopted under this part, orders of the department ~~or the board~~, or terms of a license or permit by injunction or other appropriate remedy; or

(b) action under 75-11-224."

Section 126. Section 75-11-224, MCA, is amended to read:

"75-11-224. Criminal penalties. (1) Any owner or operator who knowingly installs or closes an underground storage tank system without a permit and either an inspection or the use of the services of a

1 licensed installer as required in 75-11-209; any installer who knowingly installs or closes an underground
2 storage tank system without being licensed; or any person who knowingly makes any false statements or
3 representations in any application, permit, report, licensing form, or other document filed or maintained as
4 required by this part or required by rules adopted under this part is subject to a fine not to exceed \$10,000 for
5 each violation or imprisonment not to exceed 6 months, or both. Each day of violation constitutes a separate
6 violation.

7 (2) A person convicted of a second or subsequent criminal violation is subject to a fine not to exceed
8 \$20,000 for each violation or imprisonment not to exceed 1 year, or both. Each day of violation constitutes a
9 separate violation.

10 (3) Action under this section does not bar enforcement of this part, rules adopted under this part,
11 orders of the department or the board, or terms of a license or permit by injunction or other appropriate
12 remedy."

13
14 **Section 127.** Section 75-11-503, MCA, is amended to read:

15 **"75-11-503. Definitions.** Unless the context requires otherwise, in this part, the following definitions
16 apply:

17 ~~(1) "Board" means the board of environmental review provided for in 2-15-3502.~~

18 ~~(2)~~(1) "Department" means the department of environmental quality provided for in 2-15-3501.

19 ~~(3)~~(2) "Dispose" or "disposal" means the discharge, injection, deposit, dumping, spilling, leaking, or
20 placing of any regulated substance into or onto the land or water so that the regulated substance or any
21 constituent of the regulated substance may enter the environment or be emitted into the air or discharged into
22 any waters, including ground water.

23 ~~(4)~~(3) "Person" means the United States, an individual, firm, trust, estate, partnership, company,
24 association, corporation, city, town, local governmental entity, or any other governmental or private entity,
25 whether organized for profit or not.

26 ~~(5)~~(4) "Petroleum mixing zone" means an area where water quality standards for petroleum and
27 petroleum constituents may be exceeded subject to the conditions of 75-11-508 and consistent with rules
28 adopted under 75-11-318, 75-11-319, and 75-11-505.

1 ~~(6)~~(5) "Regulated substance":

2 (a) means:

3 (i) a hazardous substance as defined in 75-10-602; or

4 (ii) petroleum, including crude oil or any fraction of crude oil, that is liquid at standard conditions of
5 temperature and pressure (60 degrees F and 14.7 pounds per square inch absolute);

6 (b) does not include a substance regulated as a hazardous waste under Title 75, chapter 10, part 4.

7 ~~(7)~~(6) "Storage" means the actual or intended containment of regulated substances, either on a
8 temporary basis or for a period of years.

9 ~~(8)~~(7) "Underground storage tank" or "tank":

10 (a) means, except as provided in ~~subsections (8)(b)(i) through (8)(b)(xii)~~ subsection (7)(b):

11 (i) any one or a combination of tanks used to contain a regulated substance, the volume of which is
12 10% or more beneath the surface of the ground;

13 (ii) any underground pipes used to contain or transport a regulated substance and connected to a
14 storage tank, whether the storage tank is entirely above ground, partially above ground, or entirely under
15 ground; and

16 (iii) ancillary equipment designed to prevent, detect, or contain a release from an underground storage
17 tank;

18 (b) does not include:

19 (i) a farm or residential tank that was installed as of April 27, 1995, that has a capacity of 1,100
20 gallons or less and that is used for storing motor fuel for noncommercial purposes;

21 (ii) a farm or residential tank that was installed as of April 27, 1995, that has a capacity of 1,100 gallons
22 or less and that is used for storing heating oil for consumptive use on the premises where it is stored;

23 (iii) farm or residential underground pipes that were installed as of April 27, 1995, and that are used to
24 contain or to transport motor fuels for noncommercial purposes or heating oil for consumptive use on the
25 premises where it is stored from an aboveground storage tank with a capacity of 1,100 gallons or less;

26 (iv) a septic tank;

27 (v) a pipeline facility, including gathering lines, regulated under:

28 (A) the Natural Gas Pipeline Safety Act of 1968, 49 U.S.C. 1671, et seq.;

- 1 (B) the Hazardous Liquid Pipeline Safety Act of 1979, 49 U.S.C. 2001, et seq.; or
- 2 (C) state law comparable to the provisions of law referred to in subsection ~~(8)(b)(v)(A) or~~
- 3 ~~(8)(b)(v)(B)~~ (7)(b)(v)(A) or (7)(b)(v)(B) if the facility is intrastate;
- 4 (vi) a surface impoundment, pit, pond, or lagoon;
- 5 (vii) a storm water or wastewater collection system;
- 6 (viii) a flow-through process tank;
- 7 (ix) a liquid trap or associated gathering lines directly related to oil or gas production and gathering
- 8 operations;
- 9 (x) a storage tank situated in an underground area, such as a basement, cellar, mine, draft, shaft, or
- 10 tunnel, if the storage tank is situated upon or above the surface of the floor;
- 11 (xi) any pipe connected to a tank described in subsections ~~(8)(b)(i) through (8)(b)(ix)~~ (7)(b)(i) through
- 12 (7)(b)(ix); or
- 13 (xii) underground pipes connected to an aboveground storage tank at a petroleum refinery that is
- 14 subject to:
- 15 (A) facilitywide corrective action permit provisions under 75-10-406 or the federal Resource
- 16 Conservation and Recovery Act of 1976, 42 U.S.C. 6901 through 6987, as amended; or
- 17 (B) a facilitywide corrective action order under 75-10-425 or the federal Resource Conservation and
- 18 Recovery Act of 1976, 42 U.S.C. 6901 through 6987, as amended."

19

20 **Section 128.** Section 75-11-505, MCA, is amended to read:

- 21 **"75-11-505. Administrative rules -- underground storage tanks -- petroleum mixing zones. (1)**
- 22 The department may adopt, amend, or repeal rules for the prevention and correction of leakage from
- 23 underground storage tanks, including:
- 24 (a) reporting by owners and operators;
- 25 (b) financial responsibility;
- 26 (c) release detection, prevention, and corrective action;
- 27 (d) procedures and standards for the issuance, nonissuance, renewal, nonrenewal, modification,
- 28 revocation, suspension, and enforcement of permits authorizing the operation of underground storage tanks;

(e) standards for design, construction, installation, and closure;

(f) development of a schedule of annual fees, not to exceed \$108 for a tank over 1,100 gallons and not to exceed \$36 for a tank 1,100 gallons or less, for each tank, for tank registration to defray state and local costs of implementing an underground storage tank program. The department may prorate fees to cover periods not equal to 12 months in order to provide staggered scheduling of renewal dates.

(g) a system for assessment of administrative penalties, notice, and appeals under 75-11-525; and

(h) delegation of authority and funds to local agents for inspections and implementation. The delegation of authority to local agents must complement and may not duplicate existing authority for implementation of rules adopted by the department of justice that relate to underground storage tanks.

(2) In accordance with 75-11-508, the department:

(a) shall adopt rules governing the inclusion of a petroleum mixing zone, as defined in 75-11-503, in a corrective action plan; and

(b) may incorporate by reference rules adopted ~~by the board of environmental review~~ pursuant to 75-5-301 and 75-5-303 related to mixing zones for ground water."

Section 129. Section 75-11-508, MCA, is amended to read:

"75-11-508. Corrective action -- petroleum mixing zones. (1) A corrective action plan prepared pursuant to 75-11-309 may include the use of a petroleum mixing zone, as defined in 75-11-503, in conjunction with the final remediation and resolution of a petroleum release.

(2) If a petroleum mixing zone is included in a corrective action plan, it may be established only when:

(a) all source material has been removed to the maximum extent practicable;

(b) the extent of petroleum contamination has been defined;

(c) natural breakdown or attenuation is occurring within the plume; and

(d) no further corrective action is reasonably required at the site.

(3) The boundary of a petroleum mixing zone established in accordance with this section must be contained within the boundary of the property on which the petroleum release originated unless a recorded easement, a restrictive covenant, or another institutional control approved by the department on an adjoining property allows the petroleum mixing zone to extend onto the adjoining property.

(4) Monitoring of a petroleum mixing zone may not be required unless there is a unique, overriding, site-specific, impact-related reason to require monitoring.

(5) At the downgradient boundary of a petroleum mixing zone, the concentration of any petroleum constituent, including benzene, may not exceed a water quality standard adopted by the board pursuant to 75-5-301.

(6) If a petroleum mixing zone is established and maintained:

(a) the petroleum release is considered to be resolved;

(b) no further corrective action for the petroleum release is required; and

(c) the department shall issue a no-further-action letter to the owner or operator stating that a petroleum mixing zone has been established for the release and describing any conditions required to maintain the petroleum mixing zone.

(7) A corrective action plan approved by the department pursuant to 75-11-309 may be amended to include a petroleum mixing zone in accordance with this section, including a corrective action plan approved prior to April 15, 2011."

Section 130. Section 75-11-509, MCA, is amended to read:

"75-11-509. Inspections -- permits. (1) The owner or operator of an active underground storage tank must have the tank inspected for compliance with this part by January 1, 2002, and at least once every 3 years thereafter by an inspector who is licensed pursuant to Title 75, chapter 11, part 2, to perform underground storage tank inspections. The inspector may not be:

(a) the owner or operator of the tank;

(b) an employee of the owner or operator; or

(c) for the first inspection required by this subsection (1) and for a period of 3 years after the installation or modification of the tank was completed, the installer who installed or modified the tank and whose name or signature was on the permit required by 75-11-212.

(2) The owner or operator of an inactive underground storage tank shall comply with requirements for testing, inspection, recordkeeping, and reporting provided in rules adopted pursuant to this part.

(3) The department may by rule authorize temporary permits for the installation, testing, and operation

1 of underground storage tanks. The requirements in subsection (8) for a 3-year permit term and for permit
2 issuance only after inspection by a licensed inspector do not apply to temporary permits.

3 (4) The department shall by rule provide:

4 (a) requirements for the scope and timing of inspections; and

5 (b) requirements for testing, inspection, recordkeeping, and reporting for inactive tanks to ensure that
6 these tanks do not pose a threat to public health, safety, or the environment while inactive or upon their return
7 to active status.

8 (5) The inspector shall provide the owner or operator with an inspection report that meets the
9 requirements of rules adopted by the department to ensure compliance with this part and rules adopted
10 pursuant to this part.

11 (6) The owner or operator shall retain the original inspection report and mail a copy to the department.

12 (7) If the inspection report indicates violations, the owner or operator shall correct the violations and
13 obtain a followup inspection. Followup inspection reports must be provided to the owner or operator and to the
14 department.

15 (8) A person may not place a regulated substance in an underground storage tank unless the owner
16 or operator has been issued a valid permit from the department for the tank. Permits must be issued for a term
17 of 3 years. The department may not issue or renew a permit unless the owner or operator has filed with the
18 department an inspection report by a licensed inspector. Prior to issuing or renewing a permit, the department
19 shall determine, on the basis of the inspection report and other relevant information, whether the operation and
20 maintenance of the tank were in compliance with this part and rules adopted pursuant to this part on the date of
21 inspection.

22 (9) The department may determine to not issue or not renew a permit for a tank if the department
23 finds that there has been significant noncompliance with this part or with rules, permits, or orders issued
24 pursuant to this part. If the department proposes to not issue or not renew a permit, it must have a written
25 notice letter served personally or by certified mail on the owner or operator informing the owner or operator of
26 the reason for the action. The owner or operator may request a hearing before the ~~board~~ department. The
27 hearing request must be in writing and must be filed ~~with the board~~ no later than 30 days after the service of the
28 notice letter. The contested case provisions of the Montana Administrative Procedure Act, provided for in Title

1 2, chapter 4, part 6, apply to a hearing conducted under this section."

2

3 **Section 131.** Section 75-11-512, MCA, is amended to read:

4 **"75-11-512. Administrative enforcement.** (1) When the department believes that a violation of this
5 part or a rule adopted under this part has occurred, it may serve written notice of the violation personally or by
6 certified mail on the alleged violator or the violator's agent. The notice must specify the provision of this part or
7 the rule alleged to be violated and the facts alleged to constitute a violation and may include an order to take
8 necessary corrective action within a reasonable period of time stated in the order. The order becomes final
9 unless, within 30 days after the notice is served, the person named requests, in writing, a hearing before the
10 ~~board~~ department. On receipt of the request, the ~~board~~ department shall schedule a hearing. Service by mail is
11 complete on the date of receipt.

12 (2) If, after a hearing held under subsection (1), the ~~board~~ department finds that a violation has
13 occurred, it shall either affirm or modify the ~~department's~~ order. An order issued by the department ~~or by the~~
14 ~~board~~ may prescribe the date by which the violation must cease and may prescribe time limits for particular
15 action. If, after hearing, the ~~board~~ department finds that a violation has not occurred, it shall rescind the
16 ~~department's~~ order.

17 (3) In addition to or instead of issuing an order pursuant to subsection (1), the department may:

18 (a) require the alleged violator to appear before the ~~board~~ department, by subpoena or subpoena
19 duces tecum, for a hearing at a time and place specified in the notice to answer the charges complained of or to
20 provide information regarding the alleged violation or its actual or potential impact on the public health and
21 welfare or the environment;

22 (b) initiate action under 75-11-513, 75-11-514, or 75-11-516; or

23 (c) assess administrative penalties and issue corrective action orders under 75-11-525.

24 (4) In the case of disobedience of any subpoena issued and served under this section or of the
25 refusal of any witness to testify as to any material matter with regard to which the witness may be interrogated
26 in a hearing or investigation before the ~~board~~ department, the ~~board~~ department may apply to any
27 district court in the state for an order to compel compliance with the subpoena or the giving of testimony. The
28 court shall hear the matter as expeditiously as possible. If the disobedience or refusal is found to be unjustified,

1 the court shall enter an order requiring compliance. Disobedience of the order is punishable by contempt of
2 court in the same manner and by the same procedures as is provided for like conduct committed in the course
3 of civil actions in district court.

4 (5) If a person fails to comply with an order issued pursuant to subsection (1) or (3) within the time
5 allowed in the order, the department may enter the property on which the underground storage tank that is in
6 violation is located and temporarily close the tank. If the department finds that permanent closure is necessary
7 to prevent substantial environmental harm or because the owner or operator is unlikely to comply with the
8 order, it may permanently close the tank.

9 (6) This section does not prevent the ~~board or~~ department from making efforts to obtain voluntary
10 compliance through warning, conference, or any other appropriate means."
11

12 **Section 132.** Section 75-11-513, MCA, is amended to read:

13 **"75-11-513. Injunctions.** The department may institute and maintain, in the name of the state, actions
14 for injunctive relief as provided in Title 27, chapter 19, to:

15 (1) immediately restrain any person from engaging in any unauthorized activity that is endangering or
16 causing damage to the public health or to the environment;

17 (2) enjoin a violation of this part, a rule adopted under this part, or an order of the department ~~or the~~
18 ~~board~~; or

19 (3) require compliance with this part, a rule adopted under this part, or an order of the department ~~or~~
20 ~~the board~~."

21
22 **Section 133.** Section 75-11-516, MCA, is amended to read:

23 **"75-11-516. Civil penalties.** (1) (a) A person who violates any provision of this part, a rule adopted
24 under this part, or an order of the department ~~or the board~~ is subject to a civil penalty not to exceed \$10,000 for
25 each violation. Each day of violation constitutes a separate violation.

26 (b) Penalties assessed under this subsection (1) must be determined in accordance with the penalty
27 factors in 75-1-1001.

28 (2) The department may institute and maintain in the name of the state any enforcement proceedings

under this section. Upon request of the department, the attorney general or the county attorney of the county of violation shall petition the district court to impose, assess, and recover the civil penalty. Penalties are also recoverable in an action brought by the department. The action must be brought in the district court of the county in which the violation occurred or, if mutually agreed on by the parties in the action, in the district court of the first judicial district, Lewis and Clark County.

(3) Action under this section does not bar enforcement of this part, rules adopted under this part, or orders of the department ~~or the board~~.

(4) Money collected under this section must be deposited in the state general fund."

Section 134. Section 75-11-525, MCA, is amended to read:

"75-11-525. Administrative penalties for violations -- appeals -- venue. (1) (a) A person who violates any of the provisions of this part or any rules promulgated under the authority of this part may be assessed and ordered by the department to pay an administrative penalty not to exceed \$500 for each violation. This limitation on administrative penalties applies only to penalties assessed under this section. Each occurrence of the violation and each day that it remains uncorrected constitutes a separate violation. The department may suspend a portion of the administrative penalty assessed under this section if the condition that caused the assessment of the penalty is corrected within a specified time. Assessment of an administrative penalty under this section may be made in conjunction with any order or other administrative action authorized by this chapter.

(b) Penalties assessed under this subsection (1) must be determined in accordance with the penalty factors in 75-1-1001.

(2) When the department assesses an administrative penalty under this section, it must have written notice served personally or by certified mail on the alleged violator or the violator's agent. For purposes of this chapter, service by mail is complete on the day of receipt. The notice must state:

(a) the provision alleged to be violated;

(b) the facts alleged to constitute the violation;

(c) the amount of the administrative penalty assessed under this section;

(d) the amount, if any, of the penalty to be suspended upon correction of the condition that caused the

1 assessment of the penalty;

2 (e) the nature of any corrective action that the department requires, whether or not a portion of the
3 penalty is to be suspended;

4 (f) as applicable, the time within which the corrective action is to be taken and the time within which
5 the administrative penalty is to be paid; and

6 (g) the right to appeal or to a hearing to mitigate the penalty assessed.

7 (3) A person assessed a penalty under this section may request a hearing before the ~~board~~
8 department to either contest the alleged violation or request mitigation of the penalty. The contested case
9 provisions of the Montana Administrative Procedure Act, provided for in Title 2, chapter 4, part 6, apply to a
10 hearing conducted under this section. If a hearing is held under this section, it must be held in Lewis and Clark
11 County or the county in which the alleged violation occurred.

12 (4) If the department is unable to collect an administrative penalty assessed under this section or if a
13 person fails to pay all or any portion of an administrative penalty assessed under this section, the department
14 may take action in district court to recover the penalty amount and any additional amounts assessed or sought
15 under this chapter. The action must be brought in the district court of the county in which the violation occurred
16 or, if mutually agreed on by the parties in the action, in the district court of the first judicial district, Lewis and
17 Clark County.

18 (5) Action under this section does not bar action under this chapter or any other remedy available to
19 the department for violations of underground storage tank laws or rules promulgated under those laws.

20 (6) Administrative penalties collected under this section must be deposited in the state general fund."
21

22 **Section 135.** Section 75-20-104, MCA, is amended to read:

23 **"75-20-104. Definitions.** In this chapter, unless the context requires otherwise, the following
24 definitions apply:

25 (1) "Addition thereto" means the installation of new machinery and equipment that would significantly
26 change the conditions under which the facility is operated.

27 (2) "Application" means an application for a certificate submitted in accordance with this chapter and
28 the rules adopted under this chapter.

(3) (a) "Associated facilities" includes but is not limited to transportation links of any kind, aqueducts, diversion dams, pipelines, storage ponds, reservoirs, and any other device or equipment associated with the delivery of the energy form or product produced by a facility.

(b) The term does not include a transmission substation, a switchyard, voltage support, or other control equipment or a facility or a natural gas or crude oil gathering line 25 inches or less in inside diameter.

~~(4) "Board" means the board of environmental review provided for in 2-15-3502.~~

~~(5)~~(4) "Certificate" means the certificate of compliance issued by the department under this chapter that is required for the construction or operation of a facility.

~~(6)~~(5) "Commence to construct" means:

(a) any clearing of land, excavation, construction, or other action that would affect the environment of the site or route of a facility but does not mean changes needed for temporary use of sites or routes for nonutility purposes or uses in securing geological data, including necessary borings to ascertain foundation conditions;

(b) the fracturing of underground formations by any means if the activity is related to the possible future development of a gasification facility or a facility employing geothermal resources but does not include the gathering of geological data by boring of test holes or other underground exploration, investigation, or experimentation;

(c) the commencement of eminent domain proceedings under Title 70, chapter 30, for land or rights-of-way upon or over which a facility may be constructed;

(d) the relocation or upgrading of an existing facility defined by subsection ~~(9)(a) or (9)(b)~~ (8)(a) or (8)(b), including upgrading to a design capacity covered by subsection ~~(9)(a), (8)(a)~~, except that the term does not include normal maintenance or repair of an existing facility.

~~(7)~~(6) (a) "Commencement of acquisition of right-of-way" means the actual, defined legal transfer of property.

(b) The term does not mean preliminary discussions, option agreements that are not within 60 days of commencement of acquisition, letters of intent, or other documents that do not conclusively result in the legal transfer of property.

~~(8)~~(7) "Department" means the department of environmental quality provided for in 2-15-3501.

~~(9)(8)~~ "Facility" means, subject to 75-20-1202:

(a) each electric transmission line and associated facilities of a design capacity of more than 69 kilovolts, except that the term:

(i) does not include an electric transmission line and associated facilities of a design capacity of 230 kilovolts or less and 10 miles or less in length;

(ii) does not include an electric transmission line with a design capacity of more than 69 kilovolts for which the person planning to construct the line has obtained right-of-way agreements or options for a right-of-way from more than 75% of the owners who collectively own more than 75% of the property along the centerline;

(iii) does not include electric transmission lines that are collectively less than 150 miles in length and are required under state or federal regulations and laws, with respect to reliability of service, for an electrical generation facility, as defined in 15-24-3001(4), or a wind generation facility, biomass generation facility, or energy storage facility, as defined in 15-6-157, to interconnect to a regional transmission grid or secure firm transmission service to use the grid for which the person planning to construct the line or lines has obtained right-of-way agreements or options for a right-of-way from more than 75% of the owners who collectively own more than 75% of the property along the centerline or centerlines;

(iv) does not include an upgrade to an existing transmission line of a design capacity of 50 kilovolts or more to increase that line's capacity, including construction outside the existing easement or right-of-way.

Except for a newly acquired easement or right-of-way necessary to comply with electromagnetic field standards, a newly acquired easement or right-of-way outside the existing easement or right-of-way as described in this subsection ~~(9)(a)(iv)~~ (8)(a)(iv) may not exceed a total of 10 miles in length or be more than 10% of the existing transmission right-of-way, whichever is greater, and the purpose of the easement must be to avoid sensitive areas or inhabited areas or conform to state or federal safety, reliability, and operational standards designed to safeguard the transmission network and protect electrical workers and the public.

(v) does not include a transmission substation, a switchyard, voltage support, or other control equipment;

(vi) does not include an energy storage facility, as defined in 15-6-157;

(b) (i) each pipeline, whether partially or wholly within the state, greater than 25 inches in inside

1 diameter and 50 miles in length, and associated facilities, except that the term does not include:

2 (A) a pipeline within the boundaries of the state that is used exclusively for the irrigation of agricultural
3 crops or for drinking water; or

4 (B) a pipeline greater than 25 inches in inside diameter and 50 miles in length for which the person
5 planning to construct the pipeline has obtained right-of-way agreements or options for a right-of-way from more
6 than 75% of the owners who collectively own more than 75% of the property along the centerline;

7 (ii) each pipeline, whether partially or wholly within the state, greater than 17 inches in inside diameter
8 and 30 miles in length, and associated facilities used to transport coal suspended in water;

9 (c) any use of geothermal resources, including the use of underground space in existence or to be
10 created, for the creation, use, or conversion of energy, designed for or capable of producing geothermally
11 derived power equivalent to 50 megawatts or more or any addition thereto, except pollution control facilities
12 approved by the department and added to an existing plant, except that the term does not include a
13 compressed air energy storage facility, as defined in 15-6-157; or

14 (d) for the purposes of 75-20-204 only, a plant, unit, or other facility capable of generating 50
15 megawatts of hydroelectric power or more or any addition thereto.

16 ~~(10)(9)~~ "Person" means any individual, group, firm, partnership, corporation, limited liability company,
17 cooperative, association, government subdivision, government agency, local government, or other organization
18 or entity.

19 ~~(11)(10)~~ "Sensitive areas" means government-designated areas that have been recognized for their
20 importance to Montana's wildlife, wilderness, culture, and historic heritage, including but not limited to national
21 wildlife refuges, state wildlife management areas, federal areas of critical environmental concern, state parks
22 and historic sites, designated wilderness areas, wilderness study areas, designated wild and scenic rivers, or
23 national parks, monuments, or historic sites.

24 ~~(12)(11)~~ "Transmission substation" means any structure, device, or equipment assemblage, commonly
25 located and designed for voltage regulation, circuit protection, or switching necessary for the construction or
26 operation of a proposed transmission line.

27 ~~(13)(12)~~ "Transmission reliability agencies" means the federal energy regulatory commission, the
28 western electricity coordinating council, the national electric reliability council, and the midwest reliability

1 organization.

2 ~~(14)~~(13) "Upgrade" means to increase the electrical carrying capacity of a transmission line by actions
3 including but not limited to:

4 (a) installing larger conductors;

5 (b) replacing insulators;

6 (c) replacing pole or tower structures;

7 (d) changing structure spacing, design, or guying; or

8 (e) installing additional circuits.

9 ~~(15)~~(14) "Utility" means any person engaged in any aspect of the production, storage, sale, delivery, or
10 furnishing of heat, electricity, gas, hydrocarbon products, or energy in any form for ultimate public use."
11

12 **Section 136.** Section 75-20-105, MCA, is amended to read:

13 **"75-20-105. Adoption of rules.** The ~~board~~department may adopt rules implementing the provisions
14 of this chapter."
15

16 **Section 137.** Section 75-20-201, MCA, is amended to read:

17 **"75-20-201. Certificate required -- operation in conformance -- certificate for nuclear facility --**
18 **applicability to federal facilities.** (1) Except for a facility under diligent onsite physical construction or in
19 operation on January 1, 1973, a person may not commence to construct a facility in the state without first
20 applying for and obtaining a certificate of compliance issued with respect to the facility by the department.

21 (2) A facility with respect to which a certificate is issued may not be constructed, operated, or
22 maintained except in conformity with the certificate and any terms, conditions, and modifications contained
23 within the certification.

24 (3) A certificate may only be issued pursuant to this chapter.

25 (4) If the department decides to issue a certificate for a nuclear facility, it shall report the
26 recommendation to the applicant and may not issue the certificate until the recommendation is approved by a
27 majority of the voters in a statewide election called by initiative or referendum according to the laws of this
28 state.

(5) A person that proposes to construct an energy-related project that is not defined as a facility pursuant to ~~75-20-104(9)~~ 75-20-104(8) may petition the department to review the energy-related project under the provisions of this chapter. The construction or installation of an energy storage facility, as defined in 15-6-157, is not considered an energy-related project under the provisions of this chapter. A certificate for the construction or installation of an energy storage facility is not required under this chapter.

(6) This chapter applies, to the fullest extent allowed by federal law, to all federal facilities and to all facilities over which an agency of the federal government has jurisdiction.

(7) All judicial challenges of certificates for projects with a project cost, as determined by the court, of more than \$1 million must have precedence over any civil cause of a different nature pending in that court. If the court determines that the challenge was without merit or was for an improper purpose, such as to harass, to cause unnecessary delay, or to impose needless or increased cost in litigation, the court may award attorney fees and costs incurred in defending the action."

Section 138. Section 75-20-207, MCA, is amended to read:

"75-20-207. Notice requirement for certain electric transmission lines. Whenever a person plans to construct an electric transmission line or associated facilities under the provisions of ~~75-20-104(9)(a)(ii)~~ 75-20-104(8)(a)(ii), it must provide public notice to persons residing in the area in which any portion of the electric transmission facility may be located and to the department. This notice must be made no less than 60 days prior to the commencement of acquisition of right-of-way as defined in 75-20-104 by publication of a summary describing the transmission facility and the proposed location of the facility in those newspapers that will substantially inform those persons of the construction and by mailing a summary to the department. The notice must inform the property owners of their rights under this chapter concerning the location of the facility and that more information concerning their rights may be obtained from the department."

Section 139. Section 75-20-208, MCA, is amended to read:

"75-20-208. Certain electric transmission lines -- verification of requirements. (1) Prior to constructing a transmission line under ~~75-20-104(9)(a)(ii)~~ 75-20-104(8)(a)(ii), the person planning to construct the line shall provide to the department within 36 months of the date of the public notice provided under 75-20-

1 207, unless extended by the department for good cause:

2 (a) copies of the right-of-way agreements or options for a right-of-way containing sufficient information
3 to establish landowner consent to construct the line; and

4 (b) sufficient information for the department to verify that the requirements of ~~75-20-104(9)(a)(ii)~~ 75-
5 20-104(8)(a)(ii) are satisfied.

6 (2) The provisions of ~~75-20-104(9)(a)(ii)~~ 75-20-104(8)(a)(ii) do not apply to any facility for which public
7 notice under 75-20-207 has been given but for which the requirements of subsection (1) of this section have not
8 been complied with."

9

10 **Section 140.** Section 75-20-211, MCA, is amended to read:

11 **"75-20-211. Application -- filing and contents -- proof of service and notice.** (1) (a) An applicant
12 shall file with the department an application for a certificate under this chapter and for the permits required
13 under the laws administered by the department in the form that is required under applicable rules, containing
14 the following information:

15 (i) a description of the proposed location and of the facility to be built;

16 (ii) a summary of any preexisting studies that have been made of the impact of the facility;

17 (iii) for facilities defined in ~~75-20-104(9)(a) and (9)(b)~~ 75-20-104(8)(a) and (8)(b), a statement
18 explaining the need for the facility, a description of reasonable alternate locations for the facility, a general
19 description of the comparative merits and detriments of each location submitted, and a statement of the
20 reasons why the proposed location is best suited for the facility;

21 (iv) (A) for facilities as defined in ~~75-20-104(9)(a) and (9)(b)~~ 75-20-104(8)(a) and (8)(b), baseline data
22 for the primary and reasonable alternate locations; or

23 (B) for facilities as defined in ~~75-20-104(9)(c)~~ 75-20-104(8)(c), baseline data for the proposed
24 location and, at the applicant's option, any alternative locations acceptable to the applicant for siting the facility;

25 (v) at the applicant's option, an environmental study plan to satisfy the requirements of this chapter;
26 and

27 (vi) other information that the applicant considers relevant or that the department by order or rule may
28 require.

(b) If a copy or copies of the studies referred to in subsection (1)(a)(ii) are filed with the department, the copy or copies must be available for public inspection.

(2) An application may consist of an application for two or more facilities in combination that are physically and directly attached to each other and are operationally a single operating entity.

(3) The copy of the application must be accompanied by a notice specifying the date on or about which the application is to be filed.

(4) An application must also be accompanied by proof that public notice of the application was given to persons residing in the county in which any portion of the proposed facility is proposed or is alternatively proposed to be located, by publication of a summary of the application in those newspapers that will substantially inform those persons of the application."

Section 141. Section 75-20-215, MCA, is amended to read:

"75-20-215. Filing fee -- accountability -- refund -- use. (1) (a) A filing fee must be deposited in the state special revenue fund for the use of the department in administering Title 75, chapter 1, and this chapter. The applicant shall pay to the department a filing fee as provided in this section based upon the department's estimated costs of processing the application under this chapter. The fee may not exceed the following scale based upon the estimated cost of the facility:

(i) 6% of any estimated cost up to \$1 million; plus

(ii) 1% of any estimated cost over \$1 million and up to \$5 million; plus

(iii) 0.8% of any estimated cost over \$5 million and up to \$10 million; plus

(iv) 0.5% of any estimated cost over \$10 million and up to \$20 million; plus

(v) 0.25% of any estimated cost over \$20 million and up to \$100 million; plus

(vi) 0.125% of any estimated cost over \$100 million and up to \$500 million; plus

(vii) 0.05% of any estimated cost over \$500 million and up to \$1 billion; plus

(viii) 0.025% of any estimated cost over \$1 billion.

(b) The department may allow in its discretion a credit against the fee payable under this section for the development of information or providing of services required under this chapter or required for preparation of an environmental impact statement or assessment under the Montana or national environmental policy acts.

1 The applicant may submit the information to the department, together with an accounting of the expenses
2 incurred in preparing the information. The department shall evaluate the applicability, validity, and usefulness of
3 the data and determine the amount that may be credited against the filing fee payable under this section. Upon
4 30 days' notice to the applicant, this credit may at any time be reduced if the department determines that it is
5 necessary to carry out its responsibilities under this chapter.

6 (2) (a) The department may contract with an applicant for the development of information, provision
7 of services, and payment of fees required under this chapter. The contract may continue an agreement entered
8 into pursuant to 75-20-106. Payments made to the department under a contract must be credited against the
9 fee payable pursuant to this section. Notwithstanding the provisions of this section, the revenue derived from
10 the filing fee must be sufficient to enable the department, ~~the board,~~ and the agencies listed in 75-20-216(6) to
11 carry out their responsibilities under this chapter. The department may amend a contract to require additional
12 payments for necessary expenses up to the limits set forth in subsection (1)(a) upon 30 days' notice to the
13 applicant. The department and applicant may enter into a contract that exceeds the scale provided in
14 subsection (1)(a).

15 (b) If a contract is not entered into, the applicant shall pay the filing fee in installments in accordance
16 with a schedule of installments developed by the department, provided that an installment may not exceed 20%
17 of the total filing fee provided for in subsection (1).

18 (3) The estimated cost of upgrading an existing transmission substation may not be included in the
19 estimated cost of a proposed facility for the purpose of calculating a filing fee.

20 (4) If an application consists of a combination of two or more facilities, the filing fee must be based on
21 the total estimated cost of the combined facilities.

22 (5) The applicant is entitled to an accounting of money expended and to a refund with interest at the
23 rate of 6% a year of that portion of the filing fee not expended by the department in carrying out its
24 responsibilities under this chapter. A refund must be made after all administrative and judicial remedies have
25 been exhausted by all parties to the certification proceedings.

26 (6) The revenue derived from filing fees must be used by the department in compiling the information
27 required for rendering a decision on a certificate and for carrying out its ~~and the board's~~ other responsibilities
28 under this chapter."

1

2 **Section 142.** Section 75-20-216, MCA, is amended to read:

3 **"75-20-216. Study, evaluation, and report on proposed facility -- assistance by other agencies.**

4 (1) After receipt of an application, the department shall within 30 days notify the applicant in writing that:

5 (a) the application is in compliance and is accepted as complete; or

6 (b) the application is not in compliance and shall list the deficiencies. Upon correction of these
7 deficiencies and resubmission by the applicant, the department shall within 15 days notify the applicant in
8 writing that the application is in compliance and is accepted as complete.

9 (2) Upon receipt of an application complying with 75-20-211 through 75-20-213, 75-20-215, and this
10 section, the department shall:

11 (a) commence an evaluation of the proposed facility and its effects, considering all applicable criteria
12 listed in 75-20-301, and shall issue a decision, opinion, order, certification, or permit as provided in subsection

13 (3);

14 (b) use, to the extent that it considers applicable, valid and useful existing studies and reports
15 submitted by the applicant or compiled by a state or federal agency; and

16 (c) if a modification of a proposed facility is needed as determined by the department, consult with the
17 applicant. The proposed modification must be analyzed in the environmental review document prepared under
18 Title 75, chapter 1, parts 1 through 3.

19 (3) Except as provided in 75-1-205(4), 75-1-208(4)(b), and 75-20-231, the department shall issue,
20 within 9 months following the date of acceptance of an application, any decision, opinion, order, certification, or
21 permit required under the laws, other than those contained in this chapter, administered by the department. A
22 decision, opinion, order, certification, or permit, with or without conditions, must be made under those laws.
23 Nevertheless, the department retains authority to make the determination required under 75-20-301(1)(c) or (3).
24 The decision, opinion, order, certification, or permit must be used in the final site selection process. Prior to the
25 issuance of a preliminary decision by the department and pursuant to rules adopted by the ~~board~~ department,
26 the department shall provide an opportunity for public review and comment.

27 (4) Except as provided in 75-1-205(4), 75-1-208(4)(b), and 75-20-231, within 9 months following
28 acceptance of an application for a facility, the department shall issue a report that must contain the

1 department's studies, evaluations, recommendations, customer fiscal impact analysis, if required pursuant to
2 69-2-216, and other pertinent documents resulting from its study and evaluation. An environmental impact
3 statement or analysis prepared pursuant to the Montana Environmental Policy Act may be included in the
4 department findings if compelling evidence indicates that adverse environmental impacts are likely to result due
5 to the construction and operation of a proposed facility. If the application is for a combination of two or more
6 facilities, the department shall issue its report within the greater of the lengths of time provided for in this
7 subsection for either of the facilities.

8 (5) For projects subject to joint review by the department and a federal land management agency, the
9 department's certification decision may be timed to correspond to the record of decision issued by the
10 participating federal agency.

11 (6) The departments of transportation; fish, wildlife, and parks; natural resources and conservation;
12 revenue; and public service regulation and the consumer counsel shall report to the department information
13 relating to the impact of the proposed facility on each department's area of expertise. The department shall
14 allocate funds obtained from filing fees to the departments making reports and to the office of consumer
15 counsel to reimburse them for the costs of compiling information and issuing the required report."
16

17 **Section 143.** Section 75-20-219, MCA, is amended to read:

18 **"75-20-219. Amendments to certificate.** (1) (a) Within 30 days after notice of an amendment to a
19 certificate is given as set forth in 75-20-213(1), including notice to all active parties to the original proceeding,
20 the department shall determine whether the proposed change in the facility would result in a material increase
21 in any environmental impact of the facility or a substantial change in the location of all or a portion of the facility
22 as set forth in the certificate.

23 (b) If the department determines that the proposed change would result in a material increase in any
24 environmental impact of the facility or a substantial change in the location of all or a portion of the facility, the
25 department shall grant, deny, or modify the amendment with conditions as it considers appropriate.

26 (c) If the department determines that a modification of the proposed amendment to the certificate is
27 needed, it shall consult with the applicant.

28 (2) In those cases in which the department determines that the proposed change in the facility would

not result in a material increase in any environmental impact or would not be a substantial change in the location of all or a portion of the facility, the department shall automatically grant the amendment either as applied for or upon terms or conditions that the department considers appropriate.

(3) If a hearing is requested under 75-20-223(2), the party requesting the hearing has the burden of showing by clear and convincing evidence that the department's determination is not reasonable.

(4) If an amendment is required to a certificate that would affect, amend, alter, or modify a decision, opinion, order, certification, or air or water quality permit issued by the department ~~or board~~, the amendment must be processed under the applicable statutes administered by the department ~~or board~~."

Section 144. Section 75-20-223, MCA, is amended to read:

"75-20-223. ~~Board review~~Review of department decisions. (1) (a) A person aggrieved by the final decision of the department on an application for a certificate or the issuance of an air or water quality decision, opinion, order, certification, or permit under this chapter may within 30 days appeal the decision to the ~~board~~ department. Except as provided in this section, the contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing before the ~~board~~ department.

(b) If the department provided an opportunity for public comment on the application, the request for a hearing must be limited to those issues the party has raised in comments made to the department during the comment period unless the issues are related to a material change in law made during the comment period, to a judicial decision issued after the comment period, or to a material change to the draft permit, which was submitted for public comment, made by the department in the final permit decision and upon which the public did not have a meaningful opportunity to comment. The request for hearing must be filed within 30 days after the department renders its decision. An affidavit setting forth the grounds for the request must be filed with the request for a hearing.

(c) If a hearing is requested by a person other than the applicant or permittee, the applicant or permittee may, by filing a written election with the ~~board~~ department within 15 days of receipt of the request for hearing, elect to have the matter proceed to hearing ~~before the board~~ or to have the matter submitted directly to the district court for judicial review of the agency decision. The party who requests the hearing may elect to have the matter submitted either to the ~~board~~ department for a hearing or to the district court for judicial review

1 by submitting a written election to the ~~board~~department with the request for hearing. If there are conflicting
2 elections between the parties, the matter must proceed to district court. If the applicant or permittee is not the
3 person who requested the hearing and has elected to have the matter submitted to the district court, the person
4 who submitted the request for a hearing shall file a petition for review of the permit decision within 15 days of
5 receipt of notice from the permittee. If the person who requested the hearing has elected to have the matter
6 proceed to district court, that person shall file a petition in district court within 15 days of filing the request. The
7 petition must be limited to matters raised in the request for hearing and must be filed in the county in which the
8 facility is located. If the applicant or permittee fails to make an election, the matter must proceed through the
9 contested case process before the ~~board~~department pursuant to the Montana Administrative Procedure Act.
10 The ~~board~~department or the district court shall apply the laws and rules in place when the department issued
11 its decision, and the ~~board~~department or the district court may not consider any issue from a party that was not
12 presented to the department for the department's consideration during the formal comment period unless the
13 issue is related to a material change in law made during the comment period, to a judicial decision issued after
14 the comment period, or to a material change to the draft permit, which was submitted for public comment, made
15 by the department in the final permit decision and upon which the public did not have a meaningful opportunity
16 to comment.

17 (2) A person aggrieved by the final decision of the department on an application for amendment of a
18 certificate may within 15 days appeal the decision to the ~~board~~department as provided in subsections (1)(b)
19 and (1)(c).

20 (3) A person aggrieved by the department's decision not to include an environmental impact
21 statement or analysis in the department's findings pursuant to 75-20-216 may within 30 days appeal the
22 decision as provided in subsections (1)(b) and (1)(c).

23 (4) The ~~board~~department shall issue a final decision within 4 months from the close of the hearing on
24 the merits or, if no hearing is held, within 3 months from the date that briefing by the parties is complete unless
25 the applicant and the party other than the applicant agree in writing to an extension of time.

26 (5) A customer fiscal impact analysis required by 69-2-216 may not be used as the basis of an appeal
27 of a final decision by the department."
28

Section 145. Section 75-20-301, MCA, is amended to read:

"75-20-301. Decision of department -- findings necessary for certification. (1) Within 30 days after issuance of the report pursuant to 75-20-216 for facilities defined in ~~75-20-104(9)(a) and (9)(b)~~ 75-20-104(8)(a) and (8)(b), the department shall approve a facility as proposed or as modified or an alternative to a proposed facility if the department finds and determines:

- (a) the basis of the need for the facility;
- (b) the nature of the probable environmental impact;
- (c) that the facility minimizes adverse environmental impact, considering the state of available technology and the nature and economics of the various alternatives;
- (d) in the case of an electric, gas, or liquid transmission line or aqueduct:
 - (i) what part, if any, of the line or aqueduct will be located underground;
 - (ii) that the facility is consistent with regional plans for expansion of the appropriate grid of the utility systems serving the state and interconnected utility systems; and
 - (iii) that the facility will serve the interests of utility system economy and reliability;
- (e) that the location of the facility as proposed conforms to applicable state and local laws and regulations, except that the department may refuse to apply any local law or regulation if it finds that, as applied to the proposed facility, the law or regulation is unreasonably restrictive in view of the existing technology, of factors of cost or economics, or of the needs of consumers, whether located inside or outside the directly affected government subdivisions;
- (f) that the facility will serve the public interest, convenience, and necessity;
- (g) that the department ~~or board~~ has issued any necessary air or water quality decision, opinion, order, certification, or permit as required by 75-20-216(3); and
- (h) that the use of public lands or federally designated energy corridors for location of a facility defined in ~~75-20-104(9)(a) or (9)(b)~~ 75-20-104(8)(a) and (8)(b) was evaluated and public lands or federally designated energy corridors for that facility were selected whenever their use was compatible with:
 - (i) the requirements of subsections (1)(a) through (1)(g); and
 - (ii) transmission line reliability criteria established by transmission reliability agencies for a facility defined in ~~75-20-104(9)(a)~~ 75-20-104(8)(a).

(2) In determining that the facility will serve the public interest, convenience, and necessity under subsection (1)(f), the department shall consider:

- (a) the items listed in subsections (1)(a) and (1)(b);
- (b) the benefits to the applicant and the state resulting from the proposed facility;
- (c) the effects of the economic activity resulting from the proposed facility;
- (d) the effects of the proposed facility on the public health, welfare, and safety;
- (e) any other factors that it considers relevant.

(3) Within 30 days after issuance of the report pursuant to 75-20-216 for a facility defined in ~~75-20-104(9)(c)~~ 75-20-104(8)(c), the department shall approve a facility as proposed or as modified or an alternative to a proposed facility if the department finds and determines:

(a) that the facility or alternative incorporates all reasonable, cost-effective mitigation of significant environmental impacts; and

(b) that unmitigated impacts, including those that cannot be reasonably quantified or valued in monetary terms, will not result in:

- (i) a violation of a law or standard that protects the environment; or
- (ii) a violation of a law or standard that protects the public health and safety.

(4) For facilities defined in 75-20-104, if the department cannot make the findings required in this section, it shall deny the certificate."

Section 146. Section 75-20-303, MCA, is amended to read:

"75-20-303. Opinion issued with decision -- contents. (1) In rendering a decision on an application for a certificate, the department shall issue an opinion stating its reasons for the action taken.

(2) If the department has found that any regional or local law or regulation that would be otherwise applicable is unreasonably restrictive, it shall state in its opinion the reasons that it is unreasonably restrictive.

(3) A certificate issued by the department must include the following:

(a) an environmental evaluation statement related to the facility being certified. The statement must include but is not limited to analysis of the following information:

- (i) the environmental impact of the proposed facility; and

- 1 (ii) any adverse environmental effects that cannot be avoided by issuance of the certificate;
2 (b) a plan for monitoring environmental effects of the proposed facility;
3 (c) a plan for monitoring the certified facility site between the time of certification and completion of
4 construction;
5 (d) a time limit as provided in subsection (4);
6 (e) a statement confirming that notice was provided pursuant to subsection (5); and
7 (f) a statement signed by the applicant showing agreement to comply with the requirements of this
8 chapter and the conditions of the certificate.

9 (4) (a) The department shall issue as part of the certificate the following time limits:

10 (i) For a facility as defined in ~~75-20-104(9)(a)~~ 75-20-104(8)(a) that is more than 30 miles in length and
11 for a facility defined in ~~75-20-104(9)(b)~~ 75-20-104(8)(b), construction must be completed within 10 years.

12 (ii) For a facility as defined in ~~75-20-104(9)(a)~~ 75-20-104(8)(a) that is 30 miles or less in length,
13 construction must be completed within 5 years.

14 (iii) For a facility as defined in ~~75-20-104(9)(c)~~ 75-20-104(8)(c), construction must begin within 6 years
15 and continue with due diligence in accordance with preliminary construction plans established in the certificate.

16 (b) Unless extended, a certificate lapses and is void if the facility is not constructed or if construction
17 of the facility is not commenced within the time limits provided in this section.

18 (c) The time limit may be extended for a reasonable period upon a showing by the applicant to the
19 department that a good faith effort is being undertaken to complete construction under subsections (4)(a)(i) and
20 (4)(a)(ii). Under this subsection, a good faith effort includes the process of acquiring any necessary state or
21 federal permit or certificate for the facility and the process of judicial review of a permit or certificate.

22 (d) Construction may begin immediately upon issuance of a certificate unless the department finds
23 that there is substantial and convincing evidence that a delay in the commencement of construction is
24 necessary and should be established for a particular facility.

25 (5) (a) (i) Except as provided in subsection (5)(a)(ii), for a facility defined in ~~75-20-104(9)(a)~~ and
26 ~~(9)(b)~~ 75-20-104(8)(a) and (8)(b), the environmental review conducted pursuant to Title 75, chapter 1, parts 1
27 through 3, prepared by the department must designate a 500-foot-wide facility siting corridor along the facility
28 route.

(ii) Prior to preparation of the environmental review or the draft environmental impact statement, the department shall consult the applicant and, in a manner determined by rule, landowners and identify areas in which a corridor considered in the environmental review document should be more or less than 500 feet wide. The corridor width may not be narrower than the applicant's right-of-way. For each area in which the corridor is more or less than 500 feet in width, the department shall provide a written justification. The department may not modify a corridor after issuance of the final environmental review document.

(b) The department shall provide written notice of the availability of each environmental review document to each owner of property within a corridor. No more than 60 days prior to the availability of each environmental review document, the names and addresses of the property owners must be obtained from the property tax rolls of the county where the property is located. Except as provided in subsection (5)(c), the notice must:

(i) be delivered personally or by first-class mail. If delivered personally, the property owner shall sign a receipt verifying that the property owner received the statement.

(ii) inform the property owner that the property owner's property is located within a corridor;

(iii) inform the property owner about how a copy of the environmental review document may be obtained; and

(iv) inform the property owner of the property owner's rights under this chapter concerning the location of the facility and that more information concerning those rights may be obtained from the department.

(c) If there is more than one name listed on the property tax rolls for a single property, the notice must be mailed to the first listed property owner at the address on the property tax rolls.

(d) By mailing the notice as provided in subsection (5)(c), the notice requirements in subsection (5)(b) are satisfied.

(6) (a) A certificate holder may submit an adjustment of the location of a facility outside the approved facility siting corridor to the department. The adjustment must be accompanied by the written agreement of the affected property owner and all contiguous property owners that would be affected. The submission must include a map showing the approved facility siting corridor and the proposed adjustment. At the time of submission to the department, the adjustment must be accompanied by a copy of a legal notice published in a newspaper of general circulation in the area of the adjustment. The legal notice must specify that public

1 comments on the adjustment may be submitted to the department within 10 days of the publication date of the
2 notice.

3 (b) The certificate holder may construct the facility as described in the submission unless the
4 department notifies the certificate holder within 15 days of the submission that the department has determined
5 that:

6 (i) the adjustment would change the basis of any finding required under 75-20-301 to the extent that
7 the department would have selected a different siting corridor for the facility; or

8 (ii) the adjustment would materially increase unmitigated adverse impacts.

9 (c) An adjustment pursuant to subsection (6)(a) is not subject to:

10 (i) Title 75, chapter 1, part 2;

11 (ii) a certificate amendment under 75-20-219; or

12 (iii) a ~~board~~ review under 75-20-223.

13 (d) (i) For each facility, the department shall maintain a list of persons who requested to receive
14 electronic notice of any adjustment submitted pursuant to this subsection (6).

15 (ii) Upon receipt of a submitted adjustment, the department shall:

16 (A) post information about the adjustment on the department's website; and

17 (B) electronically notify each person identified in subsection (6)(d)(i) of the adjustment and where
18 information about the adjustment may be viewed."

19
20 **Section 147.** Section 75-20-304, MCA, is amended to read:

21 **"75-20-304. Waiver of provisions of certification proceedings.** (1) The department may waive
22 compliance with any of the provisions of 75-20-216 and this part if the applicant makes a clear and convincing
23 showing to the department at a public hearing that an immediate, urgent need for a facility exists and that the
24 applicant did not have knowledge that the need for the facility existed sufficiently in advance to fully comply with
25 the provisions of 75-20-216 and this part.

26 (2) The department may waive compliance with any of the provisions of this chapter upon receipt of
27 notice by a person subject to this chapter that a facility or associated facility has been damaged or destroyed as
28 a result of fire, flood, or other natural disaster or as the result of insurrection, war, or other civil disorder and

1 there exists an immediate need for construction of a new facility or associated facility or the relocation of a
2 previously existing facility or associated facility in order to promote the public welfare.

3 (3) The department shall waive compliance with the requirements of 75-20-301(1)(c), (2)(b), and
4 (2)(c) and the requirements of 75-20-211(1)(a)(iii) and (1)(a)(iv) and 75-20-216(3) relating to consideration of
5 alternative sites if the applicant makes a clear and convincing showing to the department at a public hearing
6 that:

7 (a) a proposed facility will be constructed in a county where a single employer within the county has
8 permanently curtailed or ceased operations, causing a loss of 250 or more permanent jobs within 2 years at the
9 employer's operations within the preceding 10-year period;

10 (b) the county and municipal governing bodies in whose jurisdiction the facility is proposed to be
11 located support by resolution the waiver;

12 (c) the proposed facility will be constructed within a 15-mile radius of the operations that have ceased
13 or been curtailed; and

14 (d) the proposed facility will have a beneficial effect on the economy of the county in which the facility
15 is proposed to be located.

16 (4) The waiver provided for in subsection (3) applies only to permanent job losses by a single
17 employer. The waiver provided for in subsection (3) does not apply to jobs of a temporary or seasonal nature,
18 including but not limited to construction jobs or job losses during labor disputes.

19 (5) The waiver provided for in subsection (3) does not apply to consideration of alternatives or
20 minimum adverse environmental impact for a facility defined in ~~75-20-104(9)(a) or (9)(b)~~ 75-20-104(8)(a) or
21 (8)(b) or for an associated facility defined in 75-20-104(3).

22 (6) The applicant shall pay all expenses required to process and conduct a hearing on a waiver
23 request under subsection (3). However, any payments made under this subsection must be credited toward the
24 fee paid under 75-20-215 to the extent that the data or evidence presented at the hearing or the decision of the
25 department under subsection (3) can be used in making a certification decision under this chapter.

26 (7) The department may grant only one waiver under subsections (3) and (4) for each permanent loss
27 of jobs as defined in subsection (3)(a)."
28

Section 148. Section 75-20-401, MCA, is amended to read:

"75-20-401. Additional requirements by other governmental agencies not permitted after issuance of certificate -- exceptions -- venue for challenging certificate issuance. (1) Notwithstanding any other law, a state or regional agency or municipality or other local government may not require any approval, consent, permit, certificate, or other condition for the construction, operation, or maintenance of a facility authorized by a certificate issued pursuant to this chapter, except that the department ~~and board retain~~ retains the authority ~~that they have or may be granted~~ to determine compliance of the proposed facility with state and federal standards and implementation plans for air and water quality and to enforce those standards.

(2) This chapter does not prevent the application of state laws for the protection of employees engaged in the construction, operation, or maintenance of a facility.

(3) A judicial challenge to a certificate issued pursuant to this chapter by a party other than the certificate holder or applicant must include the party to whom the certificate was issued as provided in this chapter unless otherwise agreed to by the certificate holder or applicant. All judicial challenges of certificates for projects with a project cost, as determined by the court, of more than \$1 million must have precedence over any civil cause of a different nature pending in that court. If the court determines that the challenge was without merit or was for an improper purpose, such as to harass, to cause unnecessary delay, or to impose needless or increased cost in litigation, the court may award attorney fees and costs incurred in defending the action.

(4) An action to challenge the issuance of a certificate pursuant to this chapter must be brought in the county in which the activity authorized by the certificate will occur. If an activity will occur in more than one county, the action may be brought in any of the counties in which the activity will occur."

Section 149. Section 75-20-406, MCA, is amended to read:

"75-20-406. Judicial review of ~~board~~ department decisions. (1) A person aggrieved by the final decision of the ~~board~~ department on an application for a certificate may obtain judicial review of that decision by the filing of a petition in a state district court of competent jurisdiction. A challenge to the issuance of a certificate must be brought in the county in which the activity authorized by the certificate will occur. If an activity will occur in more than one county, the action may be brought in any of the counties in which the activity will occur.

(2) The judicial review procedure is the procedure for contested cases under the Montana Administrative Procedure Act.

(3) A judicial challenge to a certificate issued pursuant to this chapter by a party other than the certificate holder or applicant must include the party to whom the certificate was issued as provided in this chapter unless otherwise agreed to by the certificate holder or applicant. All judicial challenges of certificates for projects with a project cost, as determined by the court, of more than \$1 million must have precedence over any civil cause of a different nature pending in that court. If the court determines that the challenge was without merit or was for an improper purpose, such as to harass, to cause unnecessary delay, or to impose needless or increased cost in litigation, the court may award attorney fees and costs incurred in defending the action."

Section 150. Section 75-20-407, MCA, is amended to read:

"75-20-407. Jurisdiction of courts restricted. Except as expressly set forth in 75-20-401, 75-20-406, and 75-20-408, no court of this state has jurisdiction to hear or determine any issue, case, or controversy concerning any matter which was or could have been determined in a proceeding before the ~~board~~ department under this chapter or to stop or delay the construction, operation, or maintenance of a facility, except to enforce compliance with this chapter or the provisions of a certificate issued hereunder pursuant to 75-20-404 and 75-20-405 or 75-20-408."

Section 151. Section 75-20-410, MCA, is amended to read:

"75-20-410. Order not stayed by appeal -- stay or suspension by court -- limitations.

Notwithstanding any contrary provision in the law, the pendency of an appeal from a ~~board~~ department order does not automatically stay or suspend the operation of the order. During the pendency of the appeal, the court may upon motion by one of the parties stay or suspend, in whole or in part, the operation of the ~~board's~~ department's orders on terms the court considers just. The court's action must be in accordance with the practice of courts exercising equity jurisdiction, subject to the following limitations:

(1) No stay may be granted without notice to the parties and an opportunity to be heard by the court.

(2) No ~~board~~ department order may be stayed or suspended without finding that irreparable damage would otherwise result to the party seeking the stay or suspension, and any other stay or suspension of a ~~board~~

1 department order must specify the nature of the damage."

2

3 **Section 152.** Section 75-20-411, MCA, is amended to read:

4 **"75-20-411. Surety bond -- other security.** If an order of the ~~board~~department is stayed or
5 suspended, the court may require a bond with good and sufficient surety conditioned that the party petitioning
6 for review answer for all damages caused by the delay in enforcing the order of the ~~board~~department except that the cost
7 of the bond is not chargeable to the applicant as part of the fee. If the party petitioning for review prevails upon
8 final resolution of an appeal, the party does not forfeit bond nor is the party responsible for damages caused by
9 delay."

10

11 **Section 153.** Section 75-20-1001, MCA, is amended to read:

12 **"75-20-1001. Geothermal exploration -- notification of department.** The ~~board~~department shall
13 adopt rules requiring every person who proposes to gather geological data by boring of test holes or other
14 underground exploration, investigation, or experimentation related to the possible future development of a
15 facility employing geothermal resources to comply with the following requirements:

- 16 (1) notify the department of the proposed action;
17 (2) submit to the department a description of the area involved;
18 (3) submit to the department a statement of the proposed activities to be conducted and the methods
19 to be utilized;
20 (4) submit to the department geological data reports at such times as may be required by the rules;
21 and
22 (5) submit such other information as the ~~board~~department may require in the rules."

23

24 **Section 154.** Section 75-20-1202, MCA, is amended to read:

25 **"75-20-1202. Definitions.** As used in 75-20-201, 75-20-203, and this part, the following definitions
26 apply:

- 27 (1) "Facility", as defined in ~~75-20-104(9)~~ 75-20-104(8), is further defined to include any nuclear facility
28 as defined in subsection (2)(a).

(2) (a) "Nuclear facility" means each plant, unit, or other facility designed for or capable of:

(i) generating 50 megawatts of electricity or more by means of nuclear fission;

(ii) converting, enriching, fabricating, or reprocessing uranium minerals or nuclear fuels; or

(iii) storing or disposing of radioactive wastes or materials from a nuclear facility.

(b) Nuclear facility does not include any small-scale facility used solely for educational, research, or medical purposes not connected with the commercial generation of energy."

Section 155. Section 75-20-1203, MCA, is amended to read:

"75-20-1203. Additional requirements for issuance of a certificate for the siting of a nuclear facility. (1) The ~~board~~ department may not issue a certificate to construct a nuclear facility unless it finds that:

(a) no legal limits exist regarding the rights of a person or group of persons to bring suit for and recover full and just compensation from the designers, manufacturers, distributors, owners, ~~and/or~~ or operators of a nuclear facility for damages resulting from the existence or operation of the facility; and further, that no legal limits exist regarding the total compensation ~~which~~ that may be required from the designers, manufacturers, distributors, owners, ~~and/or~~ or operators of a nuclear facility for damages resulting from the existence or operation of ~~such~~ the facility;

(b) the effectiveness of all safety systems, including but not limited to the emergency core cooling systems, of ~~such~~ the nuclear facility has been demonstrated, to the satisfaction of the ~~board~~ department, by the comprehensive laboratory testing of substantially similar physical systems in actual operation;

(c) the radioactive materials from ~~such~~ the nuclear facilities can be contained with no reasonable chance, as determined by the ~~board~~ department, of intentional or unintentional escape or diversion of ~~such~~ radioactive materials into the natural environment in ~~such a manner as to cause~~ that causes substantial or long-term harm or hazard to present or future generations due to imperfect storage technologies, earthquakes or other acts of God, theft, sabotage, acts of war or other social instabilities, or whatever other causes the ~~board~~ department may ~~deem to be~~ consider reasonably possible, at any time during which ~~such~~ the materials remain a radiological hazard; and

(d) the owner of ~~such~~ the nuclear facility has posted with the ~~board~~ department a bond totaling not less than 30% of the total capital cost of the facility, as estimated by the ~~board~~ department, to pay for the

1 decommissioning of the facility and the decontamination of any area contaminated with radioactive materials
2 due to the existence or operation of the facility in the event the owner fails to pay the full costs of ~~such the~~
3 decommissioning and decontamination. Excess bond, if any, ~~shall~~ must be refunded to the owner upon
4 demonstration, to the satisfaction of the ~~board~~ department, that the site and environs of the facility pose no
5 radiological danger to present or future generations and that whatever other conditions the ~~board~~ department
6 may ~~deem consider~~ reasonable ~~have been are~~ met.

7 (2) Nothing in this section ~~shall may~~ be construed as relieving the owner of a nuclear facility from full
8 financial responsibility for the decommissioning of ~~such the~~ facility and decontamination of any area
9 contaminated with radioactive materials as a result of the existence or operation of ~~such the~~ facility at any time
10 during which such materials remain a radiological hazard."
11

12 **Section 156.** Section 75-20-1205, MCA, is amended to read:

13 **"75-20-1205. Emergency approval authority invalid for nuclear facilities.** Notwithstanding the
14 provisions of 75-20-304(2) and (3), the ~~board~~ department may not waive compliance with any of the provisions
15 of 75-20-201 and 75-20-203 or this part relating to certification of a nuclear facility."
16

17 **Section 157.** Section 75-26-301, MCA, is amended to read:

18 **"75-26-301. Definitions.** As used in this part, unless the context requires otherwise, the following
19 definitions apply:

20 ~~(1) "Board" means the board of environmental review provided for in 2-15-3502.~~

21 ~~(2)(1)~~ "Decommission" or "decommissioning" means:

22 (a) except as provided in 75-26-304(2), the removal of buildings, cabling, electrical components,
23 roads, or any other facilities associated with a wind generation or solar facility;

24 (b) except as provided in 75-26-304(2), reclamation of surface lands to the previous grade and to
25 comparable productivity in order to prevent adverse hydrologic effects; and

26 (c) (i) the removal of the solar facility after the end of the facility's useful life or abandonment; or

27 (ii) the removal of an aboveground wind turbine tower after the end of a wind generation facility's useful
28 life or abandonment.

~~(3)~~(2) "Department" means the department of environmental quality provided for in 2-15-3501.

~~(4)~~(3) "Owner" means a person who owns a wind generation or solar facility used for the generation of electricity.

~~(5)~~(4) "Person" means any individual, firm, partnership, company, association, corporation, city, town, or local governmental entity or any other state, federal, or private entity, whether organized for profit or not.

~~(6)~~(5) "Repurposed" means having made a significant investment in an existing wind generation or solar facility to extend the useful life of the facility by more than 5 years.

~~(7)~~(6) "Solar facility" means an installation or combination of solar panels or plates, including a canopy or array, that captures and converts solar radiation to produce electricity and includes flat plate, focusing solar collectors, or photovoltaic solar cells that:

(a) has a nameplate capacity greater than or equal to 2 megawatts; and

(b) produces electricity that is not consumed on the premises of the solar facility or on land immediately adjacent to the premises of the solar facility.

~~(8)~~(7) "Wind generation facility" means any combination of a physically connected wind turbine or turbines, associated prime movers, and other associated property, including appurtenant land and improvements and personal property, that are normally operated together to produce electric power from wind and that have a nameplate capacity greater than or equal to 25 megawatts."

Section 158. Section 75-26-304, MCA, is amended to read:

"75-26-304. Bond -- penalty for failure to submit. (1) (a) Within 12 months of a wind generation facility or solar facility commencing commercial operation, the owner of a wind generation facility or solar facility operating in Montana shall:

(i) notify the department in writing of the date that the facility began commercial operation;

(ii) subject to subsection (2), submit a plan for decommissioning the facility to the department, including the scope of work to be completed and cost estimates for completion; and

(iii) provide the department with any other necessary information in accordance with this part and rules adopted pursuant to this part in order for the department to determine bond requirements in accordance with this section.

(b) Except as provided in subsection (1)(c), if a wind generation facility or solar facility commenced commercial operation before May 7, 2019, the owner of the facility shall submit to the department the information required in subsection (1)(a) on or before July 1, 2020.

(c) If a wind generation facility commenced commercial operation before May 7, 2019, and the owner of the facility submitted information required by subsection (1)(a) on or before July 1, 2018, the owner is not required to resubmit the information.

(2) If a property owner and the owner of a wind generation facility or solar facility reach an agreement concerning alternative restoration of buildings, cabling, electrical components, roads, or any other associated facilities, instead of removal, or alternative plans for reclamation of surface lands, or both, decommissioning does not include removal, plans for reclamation, or both, as long as a copy of the agreement is provided to the department.

(3) (a) If necessary, the department may modify a plan for decommissioning to determine bond requirements in accordance with subsections (4) through (8).

(b) The department shall notify the owner of the facility of any modification. The owner of the wind generation facility or solar facility may appeal a modification by the department of a plan for decommissioning to the ~~board~~ department within 60 days of receiving notice of the modification to the plan.

(4) In determining the amount of a bond required in accordance with subsection (6), the department shall consider:

(a) the character and nature of the site where the wind generation facility or solar facility is located; and

(b) the current market salvage value of the wind generation facility or solar facility, as determined by an independent evaluator.

(5) Except as provided in subsections (7) and (8) and in accordance with subsection (6), the owner of a wind generation facility or solar facility shall submit to the department a bond payable to the state of Montana in a form acceptable by the department and in the sum determined by the department, conditioned on the faithful decommissioning of the wind generation facility or solar facility.

(6) (a) Except as provided in subsections (7) and (8), if a wind generation facility or solar facility commenced commercial operation on or before January 1, 2007, the operator shall submit the

1 decommissioning bond to the department prior to the conclusion of the 16th year of operation of the wind
2 generation facility or solar facility.

3 (b) Except as provided in subsections (7) and (8), if a wind generation facility or solar facility
4 commenced commercial operation after January 1, 2007, the operator shall submit the decommissioning bond
5 to the department prior to the conclusion of the 15th year of operation of the wind generation facility or solar
6 facility.

7 (7) If a wind generation facility or solar facility is repurposed, as determined by the department in
8 consultation with the owner, the owner is not required to provide a bond, and any existing bond must be
9 released until the repurposed facility reaches its 5th year of operation.

10 (8) An owner of a wind generation facility or solar facility is exempt from the requirements of
11 subsection (6) if:

12 (a) the owner posts a bond with a federal agency, with the department of natural resources and
13 conservation for the lease of state land, or with a tribal, county, or local government;

14 (b) the owner furnishes documents to the department that prove the owner is responsible under the
15 terms and conditions of a lease agreement to provide private bonding. The parties shall agree that release of
16 the agreed upon bond is subject to the approval of the department upon completion of reclamation.

17 (c) the private landowner on whose land the wind generation facility or solar facility is located owns a
18 10% or greater share of the wind generation facility or solar facility, as determined by the department; or

19 (d) the facility:

20 (i) commenced commercial operation on or before January 1, 2018, is a wind generation facility, and
21 has less than 25 megawatts in nameplate capacity; or

22 (ii) commenced commercial operation on or before January 1, 2020, is a solar facility, and has less
23 than 2 megawatts in nameplate capacity.

24 (9) (a) If the owner of the wind generation facility or solar facility fails to submit a decommissioning
25 bond acceptable to the department within the timeframe required by this section, the department shall provide
26 notice to the facility owner. If after 30 days the owner of a wind generation facility or solar facility has not
27 submitted a decommissioning bond, the department may assess an administrative penalty of not more than
28 \$1,500 and an additional administrative penalty of not more than \$1,500 for each day the failure to submit the

1 decommissioning bond continues.

2 (b) The owner of the wind generation facility or solar facility may appeal the department's penalty
3 assessment ~~to the board~~ within 20 days after receipt of written notice of the penalty. The contested case
4 provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing before the
5 ~~board~~ department under this subsection (9).

6 (10) If the owner of a wind generation facility or solar facility transfers ownership of the facility to a
7 successor owner, the first owner's bond must be released after 90 days. The new owner shall submit any
8 necessary bond within 90 days after transfer of ownership or be subject to penalties in accordance with this
9 section.

10 (11) Once every 5 years, the owner of a wind generation facility or solar facility may submit an
11 amended plan for the department's approval. As part of the submission, the owner of a wind generation facility
12 or solar facility may also apply to the department for a reduction in the amount of the decommissioning bond
13 applicable to the wind energy facility or solar facility. The owner's application to the department must include a
14 detailed description of any material changes to information considered by the department in setting the initial
15 amount of the bond.

16 (12) Submitting a bond in accordance with this section does not absolve the owner of a wind
17 generation facility or solar facility from complying with applicable regulations and requirements for:

- 18 (a) areas subject to local zoning adopted under Title 76, chapter 2;
19 (b) military affected areas under Title 10, chapter 1, part 15; or
20 (c) airport affected areas under Title 67, chapter 7."

21

22 **Section 159.** Section 76-3-622, MCA, is amended to read:

23 **"76-3-622. Water and sanitation information to accompany preliminary plat.** (1) Except as
24 provided in subsection (2), the subdivider shall submit to the governing body or to the agent or agency
25 designated by the governing body the information listed in this section for proposed subdivisions that will
26 include new water supply or wastewater facilities. The information must include:

27 (a) a vicinity map or plan that shows:

28 (i) the location, within 100 feet outside of the exterior property line of the subdivision and on the

1 proposed lots, of:

2 (A) flood plains;

3 (B) surface water features;

4 (C) springs;

5 (D) irrigation ditches;

6 (E) existing, previously approved, and, for parcels less than 20 acres, proposed water wells and
7 wastewater treatment systems;

8 (F) for parcels less than 20 acres, mixing zones identified as provided in subsection (1)(g); and

9 (G) the representative drainfield site used for the soil profile description as required under subsection
10 (1)(d); and

11 (ii) the location, within 500 feet outside of the exterior property line of the subdivision, of public water
12 and sewer facilities;

13 (b) a description of the proposed subdivision's water supply systems, storm water systems, solid
14 waste disposal systems, and wastewater treatment systems, including:

15 (i) whether the water supply and wastewater treatment systems are individual, shared, multiple user,
16 or public as those systems are defined in rules published by the department of environmental quality; and

17 (ii) if the water supply and wastewater treatment systems are shared, multiple user, or public, a
18 statement of whether the systems will be public utilities as defined in 69-3-101 and subject to the jurisdiction of
19 the public service commission or exempt from public service commission jurisdiction and, if exempt, an
20 explanation for the exemption;

21 (c) a drawing of the conceptual lot layout at a scale no smaller than 1 inch equal to 200 feet that
22 shows all information required for a lot layout document in rules adopted by the department of environmental
23 quality pursuant to 76-4-104;

24 (d) evidence of suitability for new onsite wastewater treatment systems that, at a minimum, includes:

25 (i) a soil profile description from a representative drainfield site identified on the vicinity map, as
26 provided in subsection (1)(a)(i)(G), that complies with standards published by the department of environmental
27 quality;

28 (ii) demonstration that the soil profile contains a minimum of 4 feet of vertical separation distance

1 between the bottom of the permeable surface of the proposed wastewater treatment system and a limiting
2 layer; and

3 (iii) in cases in which the soil profile or other information indicates that ground water is within 7 feet of
4 the natural ground surface, evidence that the ground water will not exceed the minimum vertical separation
5 distance provided in subsection (1)(d)(ii);

6 (e) for new water supply systems, unless cisterns are proposed, evidence of adequate water
7 availability:

8 (i) obtained from well logs or testing of onsite or nearby wells;

9 (ii) obtained from information contained in published hydrogeological reports; or

10 (iii) as otherwise specified by rules adopted by the department of environmental quality pursuant to 76-
11 4-104;

12 (f) evidence of sufficient water quality in accordance with rules adopted by the department of
13 environmental quality pursuant to 76-4-104;

14 (g) a preliminary analysis of potential impacts to ground water quality from new wastewater treatment
15 systems, using as guidance rules adopted by the board of environmental review pursuant to 75-5-301 and 75-
16 5-303 related to standard mixing zones for ground water, source specific mixing zones, and nonsignificant
17 changes in water quality. The preliminary analysis may be based on currently available information and must
18 consider the effects of overlapping mixing zones from proposed and existing wastewater treatment systems
19 within and directly adjacent to the subdivision. Instead of performing the preliminary analysis required under this
20 subsection (1)(g), the subdivider may perform a complete nondegradation analysis in the same manner as is
21 required for an application that is reviewed under Title 76, chapter 4.

22 (2) A subdivider whose land division is excluded from review under 76-4-125(1) is not required to
23 submit the information required in this section.

24 (3) A governing body may not, through adoption of regulations, require water and sanitation
25 information in addition to the information required under this section unless the governing body complies with
26 the procedures provided in 76-3-511."

27
28 **Section 160.** Section 76-4-102, MCA, is amended to read:

1 **"76-4-102. Definitions.** As used in this part, unless the context clearly indicates otherwise, the
2 following definitions apply:

3 (1) "Adequate county water and/or sewer district facilities" means facilities provided by a county water
4 and/or sewer district incorporated under Title 7, chapter 13, that operate in compliance with Title 75, chapters 5
5 and 6.

6 (2) "Adequate municipal facilities" means municipally, publicly, or privately owned facilities that supply
7 water, treat sewage, or dispose of solid waste for all or most properties within the boundaries of a municipality
8 and that are operating in compliance with Title 75, chapters 5 and 6.

9 ~~(3) "Board" means the board of environmental review.~~

10 ~~(4)~~(3) "Certifying authority" means a municipality or a county water and/or sewer district that meets
11 the eligibility requirements established by the department under 76-4-104(6).

12 ~~(5)~~(4) "Department" means the department of environmental quality.

13 ~~(6)~~(5) "Extension of a public sewage system" means a sewerline that connects two or more sewer
14 service lines to a sewer main.

15 ~~(7)~~(6) "Extension of a public water supply system" means a waterline that connects two or more water
16 service lines to a water main.

17 ~~(8)~~(7) "Facilities" means public or private facilities for the supply of water or disposal of sewage or
18 solid waste and any pipes, conduits, or other stationary method by which water, sewage, or solid wastes might
19 be transported or distributed.

20 ~~(9)~~(8) "Individual water system" means any water system that serves one living unit or commercial
21 unit and that is not a public water supply system as defined in 75-6-102.

22 ~~(10)~~(9) "Mixing zone" has the meaning provided in 75-5-103.

23 ~~(11)~~(10) (a) "Proposed drainfield mixing zone" means a mixing zone submitted for approval under this
24 chapter after March 30, 2011.

25 (b) The term does not include drainfield mixing zones that existed or were approved under this
26 chapter prior to March 30, 2011.

27 ~~(12)~~(11) (a) "Proposed well isolation zone" means a well isolation zone submitted for approval under
28 this chapter after October 1, 2013.

(b) The term does not include well isolation zones that existed or were approved under this chapter prior to October 1, 2013.

~~(13)~~(12) "Public sewage system" or "public sewage disposal system" means a public sewage system as defined in 75-6-102.

~~(14)~~(13) "Public water supply system" has the meaning provided in 75-6-102.

~~(15)~~(14) "Registered professional engineer" means a person licensed to practice as a professional engineer under Title 37, chapter 67.

~~(16)~~(15) "Registered sanitarian" means a person licensed to practice as a sanitarian under Title 37, chapter 40.

~~(17)~~(16) "Reviewing authority" means the department or a local department or board of health certified to conduct a review under 76-4-104.

~~(18)~~(17) "Sanitary restriction" means a prohibition against the erection of any dwelling, shelter, or building requiring facilities for the supply of water or the disposition of sewage or solid waste or the construction of water supply or sewage or solid waste disposal facilities until the department has approved plans for those facilities.

~~(19)~~(18) "Sewage" has the meaning provided in 75-5-103.

~~(20)~~(19) "Sewer service line" means a sewerline that connects a single building or living unit to a public sewage system or to an extension of a public sewage system.

~~(21)~~(20) "Solid waste" has the meaning provided in 75-10-103.

~~(22)~~(21) "Subdivision" means a division of land or land so divided that creates one or more parcels containing less than 20 acres, exclusive of public roadways, in order that the title to or possession of the parcels may be sold, rented, leased, or otherwise conveyed and includes any resubdivision, any condominium, townhome, or townhouse, or any area, regardless of size, that provides permanent multiple space for recreational camping vehicles or mobile homes.

~~(23)~~(22) "Water service line" means a waterline that connects a single building or living unit to a public water supply system or to an extension of a public water supply system.

~~(24)~~(23) "Well isolation zone" means the area within a 100-foot radius of a water well."

1 **Section 161.** Section 76-4-108, MCA, is amended to read:

2 **"76-4-108. Enforcement.** (1) If the reviewing authority has reason to believe that a violation of this
3 part or a rule adopted or an order issued under this part has occurred, the reviewing authority may have written
4 notice and an order served personally or by certified mail on the alleged violator or the alleged violator's agent.
5 The notice must state the provision alleged to be violated, the facts alleged to constitute the violation, the
6 corrective action required by the reviewing authority, and the time within which the action is to be taken. A
7 notice and order issued by the department under this section may also assess an administrative penalty as
8 provided in 76-4-109. The alleged violator may, no later than 30 days after service of a notice and order under
9 this section, request a hearing before the local reviewing authority if it issued the notice of violation or the ~~board~~
10 department if the department issued the notice of violation. A request for a hearing must be filed in writing with
11 the appropriate entity and must state the reason for the request. If a request is filed, a hearing must be held
12 within a reasonable time.

13 (2) In addition to or instead of issuing an order, the reviewing authority may initiate any other
14 appropriate action to compel compliance with this part.

15 (3) The provisions of this part may be enforced by a reviewing authority other than the department or
16 ~~board~~ only for those divisions described in 76-4-104(3). If a local reviewing authority fails to adequately enforce
17 the provisions of this part, the department ~~or the board~~ may compel compliance with this part under the
18 provisions of this section.

19 (4) When a local reviewing authority exercises the authority delegated to it by this section, the local
20 reviewing authority is legally responsible for its actions under this part.

21 (5) If the department or a local reviewing authority determines that a violation of this part, a rule
22 adopted under this part, or an order issued under this part has occurred, the department or the local reviewing
23 authority may revoke its certificate of approval for the subdivision and reimpose sanitary restrictions following
24 written notice to the alleged violator. Upon revocation of a certificate, the person aggrieved by revocation may
25 request a hearing. A hearing request must be filed in writing within 30 days after receipt of the notice of
26 revocation and must state the reason for the request. The hearing is before the ~~board~~ department if the
27 department revoked the certificate or before the local reviewing authority if the local reviewing authority revoked
28 the certificate.

(6) The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing held under this section."

Section 162. Section 76-4-126, MCA, is amended to read:

"76-4-126. Right to hearing. (1) Upon a denial of approval of subdivision plans and specifications relating to environmental health facilities, the person who is aggrieved by the denial may request a hearing before the ~~board~~ department. A hearing request must be filed, in writing, within 30 days after receipt of the notice of denial and must state the reason for the request. The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing held under this section.

(2) If the grounds for a denial of approval under this part include noncompliance with local laws or regulations other than those adopting, pursuant to 50-2-116, state minimum standards for the control and disposal of sewage, the ~~board~~ department shall upon receipt of a hearing request refer the local compliance issues to the appropriate local authority. After opportunity for a hearing, the local authority shall issue a determination regarding the local compliance issues, and the ~~board~~ department shall incorporate the determination of the local authority in the ~~board's~~ final decision."

Section 163. Section 76-4-1001, MCA, is amended to read:

"76-4-1001. Penalty factors. (1) In determining the amount of an administrative or civil penalty to which subsection (4) applies, the department of environmental quality or the district court, as appropriate, shall take into account the following factors:

- (a) the nature, extent, and gravity of the violation;
- (b) the circumstances of the violation;
- (c) the violator's prior history of any violation, which:
 - (i) must be a violation of a requirement under the authority of the same chapter and part as the violation for which the penalty is being assessed;
 - (ii) must be documented in an administrative order or a judicial order or judgment issued within 3 years prior to the date of the occurrence of the violation for which the penalty is being assessed; and
 - (iii) may not, at the time that the penalty is being assessed, be undergoing or subject to administrative

1 appeal or judicial review;

2 (d) the economic benefit or savings resulting from the violator's action;

3 (e) the violator's good faith and cooperation;

4 (f) the amounts voluntarily expended by the violator, beyond what is required by law or order, to
5 address or mitigate the violation or impacts of the violation; and

6 (g) other matters that justice may require.

7 (2) After the amount of a penalty is determined under subsection (1), the department of environmental
8 quality or the district court, as appropriate, may consider the violator's financial ability to pay the penalty and
9 may institute a payment schedule or suspend all or a portion of the penalty.

10 (3) The department of environmental quality may accept a supplemental environmental project as
11 mitigation for a portion of the penalty. For purposes of this section, a "supplemental environmental project" is an
12 environmentally beneficial project that a violator agrees to undertake in settlement of an enforcement action but
13 which the violator is not otherwise legally required to perform.

14 (4) This section applies to penalties assessed by the department of environmental quality or the
15 district court under Title 75, chapters 2, 5, 6, 11, and 20; Title 75, chapter 10, parts 2, 4, 5, and 12; and Title 76,
16 chapter 4.

17 (5) ~~The board of environmental review and the~~ department of environmental quality may, ~~for the~~
18 ~~statutes listed in subsection (4) for which each has rulemaking authority,~~ adopt rules to implement this section."

19

20 **Section 164.** Section 80-15-102, MCA, is amended to read:

21 **"80-15-102. Definitions.** Unless the context requires otherwise, in this chapter, the following
22 definitions apply:

23 (1) "Agricultural chemical" means any of the following:

24 (a) a pesticide as defined in 80-8-102;

25 (b) an isomer, degradation, or metabolic product of a pesticide; or

26 (c) a commercial fertilizer as defined in 80-10-101.

27 (2) "Aquifer" means a water-bearing, subsurface formation capable of yielding sufficient quantities of
28 water to a well for a beneficial use.

(3) "Best management plans" and "best management practices" mean activities, procedures, and practices established by the department, in consultation with the Montana state university-Bozeman extension service, to prevent or remedy the introduction of agricultural chemicals into ground water to the extent technically and economically practical.

~~(4) "Board" means the board of environmental review provided for in 2-15-3502.~~

~~(5)~~(4) "Confirmatory procedure" means a process for verifying the detection of agricultural chemicals in water, soil, and other related media.

~~(6)~~(5) "EPA" means the United States environmental protection agency.

~~(7)~~(6) "Ground water" means any water of the state occupying the voids within a geologic formation and within the zone of saturation.

~~(8)~~(7) "Interim numerical standard" means a health-based number that expresses the concentration of an agricultural chemical allowed in ground water and that is adopted by a rule of the board pursuant to 80-15-201(3) or (4).

~~(9)~~(8) "Margin of safety" means numerical margins that are applied to the no observable effect level in an agricultural chemical toxicology study and that are used by the EPA to extrapolate data obtained from studies of animals to humans, including sensitive individuals.

~~(10)~~(9) "No observable effect level" means the highest dose level of an agricultural chemical to which a laboratory animal is exposed, per unit of body weight, at which no effect is observed, as established by EPA's pesticide registration process.

~~(11)~~(10) "Nonpoint source" means a diffuse source of agricultural chemicals resulting from human activities over a relatively large area, the effects of which must normally be addressed or controlled by a management or conservation practice.

~~(12)~~(11) "Nonpromulgated federal standard" means a health advisory or a suggested no adverse response level that is published but not promulgated by regulation by EPA and that is a suggested measure of the health risk represented by the concentration of an agricultural chemical in water.

~~(13)~~(12) "Numerical risk assessment" means a scientific procedure used to measure the statistical probability of human health risk associated with exposure to an agricultural chemical.

~~(14)~~(13) "Oncogenic potential" means the potential of an agricultural chemical to cause tumors in

1 laboratory animals and the extrapolation of that potential to humans through use of statistical models and other
2 evidence.

3 ~~(15)~~(14) "Person" means any individual, group, firm, cooperative, corporation, association, partnership,
4 political subdivision, state or federal government agency, or other organization or entity.

5 ~~(16)~~(15) "Point of standards application" means the specific location in an aquifer where ground water
6 quality and quantity are sampled, measured, evaluated, or otherwise used by either the department or the
7 department of environmental quality to implement the provisions of this chapter.

8 ~~(17)~~(16) "Point source" means a point source as defined in 75-5-103, including but not limited to
9 chemical mixing, loading, and storage sites and sites of agricultural chemical spills.

10 ~~(18)~~(17) "Promulgated federal standard" means an agricultural chemical maximum contaminant level
11 as established under the federal Safe Drinking Water Act, a national primary drinking water standard, or an
12 interim drinking water regulation or other EPA regulation based on federal law.

13 ~~(19)~~(18) "Registrant" means a person as defined in 80-8-102 and 80-10-101.

14 ~~(20)~~(19) "Standard" means the numerical value expressing the concentration of an agricultural
15 chemical in ground water that, when exceeded, presents a potential human health risk over a lifetime of
16 consumption and that is adopted by a rule of the ~~board~~department of environmental quality as required by 80-
17 15-201.

18 ~~(21)~~(20) "Use" means any act of handling or release of an agricultural chemical or exposure of humans
19 or the environment to an agricultural chemical, including but not limited to application, mixing, loading, storage,
20 disposal, or transportation."

21

22 **Section 165.** Section 80-15-105, MCA, is amended to read:

23 **"80-15-105. Rulemaking.** (1) The ~~board~~department of environmental quality, subject to the
24 provisions of 80-15-110, shall adopt rules for the administration of this chapter for which the ~~board and the~~
25 department of environmental quality ~~have~~has responsibility. These rules must include but are not limited to:

26 (a) standards and interim numerical standards for agricultural chemicals in ground water as
27 authorized by 80-15-201;

28 (b) procedures for ground water monitoring as authorized by 80-15-202 and 80-15-203;

(c) field and laboratory operational quality assurance, quality control, and confirmatory procedures that are authorized by 80-15-107, 80-15-202, and 80-15-203 and that may include, through adoption by reference, procedures that have been established or approved by EPA for quality assurance and quality control;

(d) standards for maintaining the confidentiality of data and information declared confidential by EPA and the confidentiality of chemical registrant data and information protected from disclosure by federal or state law as required by 80-15-108; and

(e) administrative civil penalties as authorized by 80-15-412.

(2) The department shall adopt rules necessary to carry out its responsibilities under this chapter. These rules must include but are not limited to:

(a) procedures for ground water monitoring as authorized by 80-15-202 and 80-15-203;

(b) the content and procedures for development of agricultural chemical ground water management plans, including the content of best management practices and best management plans, procedures for obtaining comments from the department of environmental quality on the plans, and the adoption of completed plans and plan modifications as authorized by 80-15-211 through 80-15-218;

(c) standards for maintaining the confidentiality of data and information declared confidential by EPA and of chemical registrant data and information protected from disclosure by federal or state law as required by 80-15-108;

(d) field and laboratory operational quality assurance, quality control, and confirmatory procedures that are authorized by 80-15-107, 80-15-202, and 80-15-203 and that may include, through adoption by reference, procedures that have been established or approved by EPA for quality assurance and quality control;

(e) emergency procedures as authorized by 80-15-405;

(f) procedures for issuance of compliance orders as authorized by 80-15-403; and

(g) procedures for the assessment of administrative civil penalties as authorized by 80-15-412."

Section 166. Section 80-15-110, MCA, is amended to read:

"80-15-110. State regulations no more stringent than federal regulations or guidelines. (1) After

1 April 14, 1995, except as provided in subsections (2) through (5) or unless required by state law, the ~~board~~
2 department of environmental quality may not adopt a rule to implement this chapter that is more stringent than
3 the comparable federal regulations or guidelines that address the same circumstances. The ~~board~~ department
4 of environmental quality may incorporate by reference comparable federal regulations or guidelines.

5 (2) The ~~board~~ department of environmental quality may adopt a rule to implement this chapter that is
6 more stringent than comparable federal regulations or guidelines only if ~~the board~~ it makes a written finding
7 after a public hearing and public comment and based on evidence in the record that:

8 (a) the proposed state standard or requirement protects public health or the environment of the state;
9 and

10 (b) the state standard or requirement to be imposed can mitigate harm to the public health or
11 environment and is achievable under current technology.

12 (3) The written finding must reference information and peer-reviewed scientific studies contained in
13 the record that forms the basis for the ~~board's~~ conclusion. The written finding must also include information from
14 the hearing record regarding the costs to the regulated community that are directly attributable to the proposed
15 state standard or requirement.

16 (4) (a) A person affected by a rule of the ~~board~~ board of environmental review adopted after January
17 1, 1990, and before April 14, 1995, that that person believes to be more stringent than comparable federal
18 regulations or guidelines may petition the ~~board~~ department of environmental quality to review the rule. If the
19 ~~board~~ department of environmental quality determines that the rule is more stringent than comparable federal
20 regulations or guidelines, ~~the board~~ it shall comply with this section by either revising the rule to conform to the
21 federal regulations or guidelines or by making the written finding, as provided under subsection (2), within a
22 reasonable period of time, not to exceed 12 months after receiving the petition. A petition under this section
23 does not relieve the petitioner of the duty to comply with the challenged rule. The ~~board~~ department of
24 environmental quality may charge a petition filing fee in an amount not to exceed \$250.

25 (b) A person may also petition the ~~board~~ department of environmental quality for a rule review under
26 subsection (4)(a) if the ~~board~~ board of environmental review ~~adopts~~ adopted a rule after January 1, 1990, and before
27 [the effective date of this act] in an area in which no federal regulations or guidelines existed and the federal
28 government subsequently establishes comparable regulations or guidelines that are less stringent than the

1 previously adopted board rule.

2 (5) This section does not apply to a rule adopted under the emergency rulemaking provisions of 2-4-
3 303(1)."

4

5 **Section 167.** Section 80-15-201, MCA, is amended to read:

6 **"80-15-201. Ground water standards.** (1) The ~~board~~ department of environmental quality shall adopt
7 standards and, as applicable, interim numerical standards for agricultural chemicals in ground water. The
8 standards must be the same as any promulgated or nonpromulgated federal standard established by EPA,
9 although the ~~board~~ department of environmental quality may determine, pursuant to the requirements of
10 subsection (4), that an interim numerical standard different from either a promulgated or nonpromulgated
11 federal standard is justified. Promulgated federal standards must receive preference. Except as provided in
12 subsections (3) and (4), if more than one nonpromulgated federal standard exists for an agricultural chemical,
13 the ~~board~~ department of environmental quality must adopt the most recently established nonpromulgated
14 federal standard.

15 (2) The ~~board~~ department of environmental quality is not required to adopt a standard or interim
16 numerical standard for each agricultural chemical registered in the state. The only standards and interim
17 numerical standards required are for those agricultural chemicals:

18 (a) that are addressed by promulgated and nonpromulgated federal standards;

19 (b) the presence of which has been verified in ground water as provided in 80-15-202; or

20 (c) that the department and the department of environmental quality predict may appear in ground
21 water, in accordance with the procedures and determinations specified in 80-15-202 and 80-15-203.

22 (3) If a promulgated federal standard has not been adopted or a nonpromulgated federal standard
23 has not been published for an agricultural chemical for which the ~~board~~ department of environmental quality is
24 required to establish a standard or interim numerical standard as specified in subsections (2)(b) and (2)(c), the
25 department of environmental quality shall request EPA to establish a promulgated or nonpromulgated federal
26 standard. If the department of environmental quality determines that EPA cannot comply with the request within
27 15 days, the ~~board~~ department of environmental quality shall adopt an interim numerical standard, provided that
28 the ~~board~~ department of environmental quality shall review the interim numerical standard whenever EPA

1 adopts a promulgated federal standard or publishes a nonpromulgated federal standard for the agricultural
2 chemical in question.

3 (4) The ~~board~~department of environmental quality may adopt an interim numerical standard that is
4 different from either a promulgated or nonpromulgated federal standard if there is significant new and relevant
5 technical information available that is scientifically valid. The ~~board~~department of environmental quality shall
6 review the interim numerical standard when EPA establishes or revises the promulgated or nonpromulgated
7 federal standard for the agricultural chemical in question.

8 (5) The ~~board~~department of environmental quality shall consider the following in adopting any interim
9 numerical standard under either subsection (3) or (4):

10 (a) effects on a person weighing 70 kilograms and drinking 2 liters of water per day over a lifetime;
11 and

12 (b) EPA's conclusions regarding the no observable effect level, including the margin of safety
13 identified by EPA, when scientific data indicates oncogenic potential for the agricultural chemical and EPA has
14 determined that a numerical risk assessment is not justified, is inappropriate, or does not serve as the primary
15 toxicological basis for regulation.

16 (6) Nothing in this section may interfere with the ~~board's~~department of environmental quality's
17 responsibility to adopt rules and standards under Title 75, chapter 6."
18

19 **Section 168.** Section 82-4-102, MCA, is amended to read:

20 **"82-4-102. Intent -- findings -- policy and purpose.** (1) The legislature, mindful of its constitutional
21 obligations under Article II, section 3, and Article IX of the Montana constitution, has enacted The Strip and
22 Underground Mine Siting Act. It is the legislature's intent that the requirements of this part provide adequate
23 remedies for the protection of the environmental life support system from degradation and provide adequate
24 remedies to prevent unreasonable depletion and degradation of natural resources.

25 (2) It is the policy of this state to provide adequate remedies for the protection of the environmental
26 life support system from degradation and provide adequate remedies to prevent unreasonable depletion and
27 degradation of natural resources.

28 (3) It is the purpose of this part:

(a) to vest in the department the authority to adopt rules and to review new strip-mine and new underground-mine site locations and reclamation plans and either approve or disapprove those locations and plans and to exercise general administration and enforcement of this part;

~~(b) to vest in the board the authority to adopt rules;~~

~~(c)(b)~~ to satisfy the requirement of Article IX, section 2, of the constitution of this state that all lands disturbed by the taking of natural resources be reclaimed; and

~~(d)(c)~~ to ensure that adequate information is available on areas proposed for strip mining or underground mining so that mining and reclamation plans may be properly formulated to accommodate areas that are suitable for strip mining or underground mining.

(4) This part is an exercise of the general police power to provide for the health and welfare of the people."

Section 169. Section 82-4-103, MCA, is amended to read:

"82-4-103. Definitions. When used in this part, unless a different meaning clearly appears from the context, the following definitions apply:

~~(1) "Board" means the board of environmental review provided for in 2-15-3502.~~

~~(2)(1)~~ "Department" means the department of environmental quality provided for in 2-15-3501.

~~(3)(2)~~ "Mineral" means mineral as defined in 82-4-203.

~~(4)(3)~~ "New mine" means a strip- or underground-mining operation proposed for an area of land that the department determines, because of distance from an existing strip-mine or underground-mine operation or their respective facilities or because of important differences in topography, soils, wildlife, geologic structure, aquifers, or vegetation from an existing strip-mine or underground-mine operation, does not constitute an expansion of an existing operation.

~~(5)(4)~~ "Operation" means all of the premises, facilities, railroad loops, roads, power lines, and equipment used in the process of producing and removing mineral from a designated strip-mine or underground-mine area.

~~(6)(5)~~ "Operator" means a person who intends to operate a new strip mine or new underground mine involving the removal of more than 10,000 cubic yards of mineral or overburden.

~~(7)(6)~~ "Person" means a person, partnership, corporation, association, or other legal entity or any political subdivision or agency of the state.

~~(8)(7)~~ "Preparatory work" means all onsite disturbances, excluding prospecting, associated with the initiation of a new strip mine or underground mine, including but not limited to the construction of railroad spurs or loops, buildings to house mining operations, roads, storage and train load-out facilities, transmission lines, erection of draglines and loading shovels, and other associated facilities.

~~(9)(8)~~ "Strip mining" means any part of the process followed in the production of mineral by the openpit method, including mining by the auger method or any similar method that penetrates a mineral deposit and removes mineral directly through a series of openings made by a machine that enters the deposit from a surface excavation or any other method or process in which the strata or overburden is removed or displaced in order to recover the mineral.

~~(10)(9)~~ "Underground mining" means any part of the process that is followed in the production of a mineral and that uses vertical or horizontal shafts, slopes, drifts, or incline planes connected with excavations penetrating the mineral stratum or strata."

Section 170. Section 82-4-112, MCA, is amended to read:

"82-4-112. Administration. (1) The department shall:

(a) adopt, after an opportunity for a hearing, general rules pertaining to new strip mines and to new underground mines and preparatory work to accomplish the purposes of this part, rules regarding filing of reports, issuance of permits, and other matters of procedure and administration;

~~(a)(b)~~ exercise general supervision, administration, and enforcement of this part and all rules and orders adopted under this part;

~~(b)(c)~~ issue orders requiring operators to adopt remedial measures necessary to comply with this part and rules adopted under this part;

~~(c)(d)~~ order the suspension of any permit for failure to comply with this part, any rule adopted under this part, or a permit issued pursuant to this part;

~~(d)(e)~~ issue an order revoking a permit when the requirements set forth by a notice of violation, order of suspension, or order requiring remedial measures have not been complied with according to the terms in the

1 notice or order;
2 ~~(e)~~(f) order the halting of any operation that is started without first having obtained a permit as
3 required by this part;
4 ~~(f)~~(g) conduct investigations and inspections necessary to ensure compliance with this part; and
5 ~~(g)~~(h) encourage and conduct investigations, research, experiments, and demonstrations and collect
6 and disseminate information relating to new strip mines, new underground mines, and reclamation of lands and
7 waters affected by preparatory work.
8 (2) The ~~board~~department shall conduct hearings under this part."

10 **Section 171.** Section 82-4-123, MCA, is amended to read:

11 **"82-4-123. Permit fee and surety bond.** A fee of \$50 shall be paid before the mine-site location
12 permit required in this part may be issued. The operator shall also file with the department a bond payable to
13 the state of Montana with surety satisfactory to the department in the penal sum to be determined by the
14 department of not less than \$200 or more than \$10,000 for each acre or fraction thereof of the area of land to
15 be disturbed by preparatory work, with a minimum bond of \$5,000, conditioned upon the faithful performance of
16 the requirements set forth in this part and of the rules of the ~~board~~department. In determining the amount of the
17 bond within the above limits, the department shall take into consideration the character and nature of the
18 surface and subsurface disturbances, the future suitable use of the land involved, and the cost of removing or
19 burying facilities, subsidence stabilization, water controls, backfilling, grading, topsoiling, and reclamation to be
20 required. Notwithstanding the above limits, the bond may not be less than the total estimated cost to the state
21 of completing the work described in the reclamation plan."

23 **Section 172.** Section 82-4-129, MCA, is amended to read:

24 **"82-4-129. Noncompliance -- suspension of permits.** (1) If any of the requirements of this part or
25 rules or orders of the department have not been complied with within the time limits set by the department or by
26 this part, the department shall serve a notice of noncompliance on the operator or, when necessary, the director
27 of the department shall order the suspension of a permit. The notice or order must be handed to the operator in
28 person or served by certified mail addressed to the permanent address shown on the application for a permit.

1 The notice of noncompliance or order of suspension must specify in what respects the operator has failed to
2 comply with this part or the rules or orders of the department ~~and the board~~. If the operator has not complied
3 with the requirement set forth in the notice of noncompliance or order of suspension within time limits set in the
4 notice or order, the permit may be revoked by order of the ~~board~~ department and the performance bond
5 forfeited to the department.

6 (2) Any additional strip-mining or underground-mining or mine-site location permits held by an
7 operator whose mine-site location permit has been revoked must be suspended, and the operator is not eligible
8 to receive another permit or to have the suspended permits reinstated until the operator has complied with all
9 the requirements of this part with respect to previous permits issued to the operator. An operator who has
10 forfeited a bond is not eligible to receive another permit unless the land for which the bond was forfeited has
11 been reclaimed without cost to the state or the operator has paid into the reclamation account a sum together
12 with the value of the bond the department finds adequate to reclaim the lands. The department may not issue
13 any additional permits to an operator who has repeatedly been in noncompliance or violation of this part."
14

15 **Section 173.** Section 82-4-130, MCA, is amended to read:

16 **"82-4-130. Procedure for hearings.** (1) A person aggrieved by a final decision of the department
17 under this part may request a hearing before the ~~board~~ department by submitting a written request stating the
18 reason for the request within 30 days after the department's decision.

19 (2) The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4,
20 part 6, apply to a hearing held under this part."
21

22 **Section 174.** Section 82-4-203, MCA, is amended to read:

23 **"82-4-203. Definitions.** Unless the context requires otherwise, in this part, the following definitions
24 apply:

25 (1) "Abandoned" means an operation in which a mineral is not being produced and that the
26 department determines will not continue or resume operation.

27 (2) "Adjacent area" means the area outside the permit area where a resource or resources,
28 determined in the context in which the term is used, are or could reasonably be expected to be adversely

1 affected by proposed mining operations, including probable impacts from underground workings.

2 (3) (a) "Alluvial valley floor" means the unconsolidated stream-laid deposits holding streams where
3 water availability is sufficient for subirrigation or flood irrigation agricultural activities.

4 (b) The term does not include upland areas that are generally overlain by a thin veneer of colluvial
5 deposits composed chiefly of debris from sheet erosion and deposits by unconcentrated runoff or slope wash,
6 together with talus, other mass movement accumulation, and windblown deposits.

7 (4) "Approximate original contour" means that surface configuration achieved by backfilling and
8 grading of the mined area so that the reclaimed area, including any terracing or access roads, closely
9 resembles the general surface configuration of the land prior to mining and blends into and complements the
10 drainage pattern of the surrounding terrain, with all highwalls, spoil piles, and coal refuse piles eliminated, so
11 that:

12 (a) the reclaimed terrain closely resembles the general surface configuration if it is comparable to the
13 premine terrain. For example, if the area was basically level or gently rolling before mining, it should retain
14 these features after mining, recognizing that rolls and dips need not be restored to their original locations and
15 that level areas may be increased.

16 (b) the reclaimed area blends with and complements the drainage pattern of the surrounding area so
17 that water intercepted within or from the surrounding terrain flows through and from the reclaimed area in an
18 unobstructed and controlled manner;

19 (c) postmining drainage basins may differ in size, location, configuration, orientation, and density of
20 ephemeral drainageways compared to the premining topography if they are hydrologically stable, soil erosion is
21 controlled to the extent appropriate for the postmining land use, and the hydrologic balance is protected; and

22 (d) the reclaimed surface configuration is appropriate for the postmining land use.

23 (5) "Aquifer" means any geologic formation or natural zone beneath the earth's surface that contains
24 or stores water and transmits it from one point to another in quantities that permit or have the potential to permit
25 economic development as a water source.

26 (6) (a) "Area of land affected" means the area of land from which overburden is to be or has been
27 removed and upon which the overburden is to be or has been deposited.

28 (b) The term includes:

- 1 (i) all land overlying any tunnels, shafts, or other excavations used to extract the mineral;
- 2 (ii) lands affected by the construction of new railroad loops and roads or the improvement or use of
- 3 existing railroad loops and roads to gain access and to haul the mineral;
- 4 (iii) processing facilities at or near the mine site or other mine-associated facilities, waste deposition
- 5 areas, treatment ponds, and any other surface or subsurface disturbance associated with strip mining or
- 6 underground mining; and
- 7 (iv) all activities necessary and incident to the reclamation of the mining operations.
- 8 (7) "Bench" means the ledge, shelf, table, or terrace formed in the contour method of strip mining.
- 9 ~~(8) "Board" means the board of environmental review provided for in 2-15-3502.~~
- 10 ~~(9)(8)~~ "Coal conservation plan" means the planned course of conduct of a strip- or underground-
- 11 mining operation and includes plans for the removal and use of minable and marketable coal located within the
- 12 area planned to be mined.
- 13 ~~(10)(9)~~ (a) "Coal preparation" means the chemical or physical processing of coal and its cleaning,
- 14 concentrating, or other processing or preparation.
- 15 (b) The term does not mean the conversion of coal to another energy form or to a gaseous or liquid
- 16 hydrocarbon, except for incidental amounts that do not leave the plant, nor does the term mean processing for
- 17 other than commercial purposes.
- 18 ~~(11)(10)~~ "Coal preparation plant" means a commercial facility where coal is subject to coal preparation.
- 19 The term includes commercial facilities associated with coal preparation activities but is not limited to loading
- 20 buildings, water treatment facilities, water storage facilities, settling basins and impoundments, and coal
- 21 processing and other waste disposal areas.
- 22 ~~(12)(11)~~ "Contour strip mining" means that strip-mining method commonly carried out in areas of rough
- 23 and hilly topography in which the coal or mineral seam outcrops along the side of the slope and entrance are
- 24 made to the seam by excavating a bench or table cut at and along the site of the seam outcropping, with the
- 25 excavated overburden commonly being cast down the slope below the mineral seam and the operating bench.
- 26 ~~(13)(12)~~ "Cropland" means land used for the production of adapted crops for harvest, alone or in
- 27 rotation with grasses and legumes, that include row crops, small grain crops, hay crops, nursery crops, orchard
- 28 crops, and other similar crops.

~~(14)~~(13) "Degree" means a measurement from the horizontal. In each case, the measurement is subject to a tolerance of 5% error.

~~(15)~~(14) "Department" means the department of environmental quality provided for in 2-15-3501.

~~(16)~~(15) "Developed water resources" means land used for storing water for beneficial uses, such as stockponds, irrigation, fire protection, flood control, and water supply.

~~(17)~~(16) "Ephemeral drainageway" means a drainageway that flows only in response to precipitation in the immediate watershed or in response to the melting of snow or ice and is always above the local water table.

~~(18)~~(17) "Failure to conserve coal" means the nonremoval or nonuse of minable and marketable coal by an operation. However, the nonremoval or nonuse of minable and marketable coal that occurs because of compliance with reclamation standards established by the department is not considered failure to conserve coal.

~~(19)~~(18) "Fill bench" means that portion of a bench or table that is formed by depositing overburden beyond or downslope from the cut section as formed in the contour method of strip mining.

~~(20)~~(19) "Fish and wildlife habitat" means land dedicated wholly or partially to the production, protection, or management of species of fish or wildlife.

~~(21)~~(20) "Forestry" means land used or managed for the long-term production of wood, wood fiber, or wood-derived products.

~~(22)~~(21) "Grazing land" means land used for grasslands and forest lands where the indigenous vegetation is actively managed for livestock grazing or browsing or occasional hay production.

~~(23)~~(22) "Higher or better uses" means postmining land uses that have a higher economic value or noneconomic benefit to the landowner or the community than the premining land uses.

~~(24)~~(23) "Hydrologic balance" means the relationship between the quality and quantity of water inflow to, water outflow from, and water storage in a hydrologic unit, such as a drainage basin, aquifer, soil zone, lake, or reservoir, and encompasses the dynamic relationships among precipitation, runoff, evaporation, and changes in ground water and surface water storage.

~~(25)~~(24) "Imminent danger to the health and safety of the public" means the existence of any condition or practice or any violation of a permit or other requirement of this part in a strip- or underground-coal-mining and reclamation operation that could reasonably be expected to cause substantial physical harm to persons

1 outside the permit area before the condition, practice, or violation can be abated. A reasonable expectation of
2 death or serious injury before abatement exists if a rational person, subjected to the same conditions or
3 practices giving rise to the peril, would not willingly be exposed to the danger during the time necessary for
4 abatement.

5 ~~(26)~~(25) "Industrial or commercial" means land used for:

6 (a) extraction or transformation of materials for fabrication of products, wholesaling of products, or
7 long-term storage of products. This includes all heavy and light manufacturing facilities.

8 (b) retail or trade of goods or services, including hotels, motels, stores, restaurants, and other
9 commercial establishments.

10 ~~(27)~~(26) (a) "In situ coal gasification" means a method of in-place coal mining where limited quantities
11 of overburden are disturbed to install a conduit or well and coal is mined by injecting or recovering a liquid,
12 solid, sludge, or gas that causes the leaching, dissolution, gasification, liquefaction, or extraction of the coal.

13 (b) In situ coal gasification does not include the storage of carbon dioxide in a geologic storage
14 reservoir, the primary or enhanced recovery of naturally occurring oil and gas, or any related process regulated
15 by the board of oil and gas conservation pursuant to Title 82, chapter 11.

16 ~~(28)~~(27) "Intermittent stream" means a stream or reach of a stream that is below the water table for at
17 least some part of the year and that obtains its flow from both ground water discharge and surface runoff.

18 ~~(29)~~(28) "Land use" means specific uses or management-related activities, rather than the vegetative
19 cover of the land. Land uses may be identified in combination when joint or seasonal uses occur and may
20 include land used for support facilities that are an integral part of the land use. Land use categories include
21 cropland, developed water resources, fish and wildlife habitat, forestry, grazing land, industrial or commercial,
22 pastureland, land occasionally cut for hay, recreation, or residential.

23 ~~(30)~~(29) "Marketable coal" means a minable coal that is economically feasible to mine and is fit for sale
24 in the usual course of trade.

25 ~~(31)~~(30) "Material damage" means, with respect to protection of the hydrologic balance, degradation or
26 reduction by coal mining and reclamation operations of the quality or quantity of water outside of the permit
27 area in a manner or to an extent that land uses or beneficial uses of water are adversely affected, water quality
28 standards are violated, or water rights are impacted. Violation of a water quality standard, whether or not an

1 existing water use is affected, is material damage.

2 ~~(32)~~(31) "Method of operation" means the method or manner by which the cut, open pit, shaft, or
3 excavation is made, the overburden is placed or handled, water is controlled, and other acts are performed by
4 the operator in the process of uncovering and removing the minerals that affect the reclamation of the area of
5 land affected.

6 ~~(33)~~(32) "Minable coal" means that coal that can be removed through strip- or underground-mining
7 methods adaptable to the location that coal is being mined or is planned to be mined.

8 ~~(34)~~(33) "Mineral" means coal and uranium.

9 ~~(35)~~(34) "Operation" means:

10 (a) all of the premises, facilities, railroad loops, roads, and equipment used in the process of
11 producing and removing mineral from and reclaiming a designated strip-mine or underground-mine area,
12 including coal preparation plants; and

13 (b) all activities, including excavation incident to operations, or prospecting for the purpose of
14 determining the location, quality, or quantity of a natural mineral deposit.

15 ~~(36)~~(35) "Operator" means a person engaged in:

16 (a) strip mining or underground mining who removes or intends to remove more than 10,000 cubic
17 yards of mineral or overburden;

18 (b) coal mining who removes or intends to remove more than 250 tons of coal from the earth by
19 mining within 12 consecutive calendar months in any one location;

20 (c) operating a coal preparation plant; or

21 (d) uranium mining using in situ methods.

22 ~~(37)~~(36) "Overburden" means:

23 (a) all of the earth and other materials that lie above a natural mineral deposit; and

24 (b) the earth and other material after removal from their natural state in the process of mining.

25 ~~(38)~~(37) "Pastureland" means land used primarily for the long-term production of adapted,
26 domesticated forage plants to be grazed by livestock or occasionally cut and cured for livestock feed.

27 ~~(39)~~(38) "Perennial stream" means a stream or part of a stream that flows continuously during all of the
28 calendar year as a result of ground water discharge or surface runoff.

1 ~~(40)~~(39) "Person" means a person, partnership, corporation, association, or other legal entity or any
2 political subdivision or agency of the state or federal government.

3 ~~(41)~~(40) "Prime farmland" means land that:

4 (a) meets the criteria for prime farmland prescribed by the United States secretary of agriculture in the
5 Federal Register; and

6 (b) historically has been used for intensive agricultural purposes.

7 ~~(42)~~(41) "Prospecting" means:

8 (a) the gathering of surface or subsurface geologic, physical, or chemical data by mapping, trenching,
9 or geophysical or other techniques necessary to determine:

10 (i) the quality and quantity of overburden in an area; or

11 (ii) the location, quantity, or quality of a mineral deposit; or

12 (b) the gathering of environmental data to establish the conditions of an area before beginning strip-
13 or underground-coal-mining and reclamation operations under this part.

14 ~~(43)~~(42) "Reclamation" means backfilling, subsidence stabilization, water control, grading, highwall
15 reduction, topsoiling, planting, revegetation, and other work conducted on lands affected by strip mining or
16 underground mining under a plan approved by the department to make those lands capable of supporting the
17 uses that those lands were capable of supporting prior to any mining or to higher or better uses.

18 ~~(44)~~(43) "Recovery fluid" means any material that flows or moves, whether in semisolid, liquid, sludge,
19 gas, or some other form or state, used to dissolve, leach, gasify, or extract coal.

20 ~~(45)~~(44) "Recreation" means land used for public or private leisure-time activities, including developed
21 recreation facilities, such as parks, camps, and amusement areas, as well as areas for less intensive uses,
22 such as hiking, canoeing, and other undeveloped recreational uses.

23 ~~(46)~~(45) "Reference area" means a land unit maintained under appropriate management for the
24 purpose of measuring vegetation ground cover, productivity, and plant species diversity that are produced
25 naturally or by crop production methods approved by the department. Reference areas must be representative
26 of geology, soil, slope, and vegetation in the permit area.

27 ~~(47)~~(46) "Remining" means conducting surface coal mining and reclamation operations that affect
28 previously mined areas (for example, the recovery of additional mineral from existing gob or tailings piles).

~~(48)~~(47) "Residential" means land used for single- and multiple-family housing, mobile home parks, or other residential lodgings.

~~(49)~~(48) "Restore" or "restoration" means reestablishment after mining and reclamation of the land use that existed prior to mining or to higher or better uses.

~~(50)~~(49) (a) "Strip mining" means any part of the process followed in the production of mineral by the opencut method, including mining by the auger method or any similar method that penetrates a mineral deposit and removes mineral directly through a series of openings made by a machine that enters the deposit from a surface excavation or any other mining method or process in which the strata or overburden is removed or displaced in order to recover the mineral.

(b) For the purposes of this part only, strip mining also includes remining and coal preparation.

(c) The terms "remining" and "coal preparation" are not included in the definition of "strip mining" for purposes of Title 15, chapter 35, part 1.

~~(51)~~(50) "Subsidence" means a vertically downward movement of overburden materials resulting from the actual mining of an underlying mineral deposit or associated underground excavations.

~~(52)~~(51) "Surface owner" means:

(a) a person who holds legal or equitable title to the land surface;

(b) a person who personally conducts farming or ranching operations upon a farm or ranch unit to be directly affected by strip-mining operations or who receives directly a significant portion of income from farming or ranching operations;

(c) the state of Montana when the state owns the surface; or

(d) the appropriate federal land management agency when the United States government owns the surface.

~~(53)~~(52) "Topsoil" means the unconsolidated mineral matter that is naturally present on the surface of the earth, that has been subjected to and influenced by genetic and environmental factors of parent material, climate, macroorganisms and microorganisms, and topography, all acting over a period of time, and that is necessary for the growth and regeneration of vegetation on the surface of the earth.

~~(54)~~(53) "Underground mining" means any part of the process that is followed in the production of a mineral and that uses vertical or horizontal shafts, slopes, drifts, or incline planes connected with excavations

1 penetrating the mineral stratum or strata. The term includes mining by in situ methods.

2 ~~(55)~~(54) "Unwarranted failure to comply" means:

3 (a) the failure of a permittee to prevent the occurrence of any violation of a permit or any requirement
4 of this part because of indifference, lack of diligence, or lack of reasonable care; or

5 (b) the failure to abate any violation of a permit or of this part because of indifference, lack of
6 diligence, or lack of reasonable care.

7 ~~(56)~~(55) "Waiver" means a document that demonstrates the clear intention to release rights in the
8 surface estate for the purpose of permitting the extraction of subsurface minerals by strip-mining methods.

9 ~~(57)~~(56) "Wildlife habitat enhancement feature" means a component of the reclaimed landscape,
10 established in conjunction with land uses other than fish and wildlife habitat, for the benefit of wildlife species,
11 including but not limited to tree and shrub plantings, food plots, wetland areas, water sources, rock outcrops,
12 microtopography, or raptor perches.

13 ~~(58)~~(57) "Written consent" means a statement that is executed by the owner of the surface estate and
14 that is written on a form approved by the department to demonstrate that the owner consents to entry of an
15 operator for the purpose of conducting strip-mining operations and that the consent is given only to strip-mining
16 and reclamation operations that fully comply with the terms and requirements of this part."

17

18 **Section 175.** Section 82-4-205, MCA, is amended to read:

19 **"82-4-205. Administration by department and board.** (1) The department shall adopt, after an
20 opportunity for a hearing, general rules pertaining to strip mining and to underground mining to accomplish the
21 purposes of this part. The department may adopt rules with respect to filing of reports, issuance of permits,
22 monitoring, and other matters of procedure and administration.

23 ~~(1)~~(2) The department:

24 (a) shall exercise general supervision, administration, and enforcement of this part and all rules and
25 orders adopted under this part;

26 (b) shall review for approval or disapproval all plans and specifications submitted by an operator for
27 the method of operation, subsidence stabilization, water control, backfilling, grading, highwall reduction, and
28 topsoiling and for the reclamation of the area of land affected by the operator's operation;

(c) shall issue orders requiring an operator to adopt the remedial measures necessary to comply with this part and rules adopted under this part;

(d) shall order the suspension of any permit for failure to comply with this part or a rule adopted under this part;

(e) shall issue an order revoking a permit when the requirements set forth by a notice of violation, order of suspension, or order requiring remedial measures have not been complied with according to the terms in the notice or order;

(f) shall order the halting of any operation that is started without first having obtained a permit as required by this part or order the cessation of operations not in compliance with this part in accordance with 82-4-251;

(g) shall conduct public hearings required under this part or rules adopted ~~by the board~~ pursuant to this part;

(h) shall conduct investigations and inspections necessary to ensure compliance with this part;

(i) shall conduct contested case hearings under this part; and

~~(j)~~ (i) may encourage and conduct investigations, research, experiments, and demonstrations and collect and disseminate information relating to strip mining and to underground mining and reclamation of lands and waters affected by strip mining and underground mining.

~~(2) The board shall conduct contested case hearings under this part."~~

Section 176. Section 82-4-206, MCA, is amended to read:

"82-4-206. Procedure for contested case hearings. (1) An applicant, permittee, or person with an interest that is or may be adversely affected may request a hearing before the ~~board~~ department on any of the following decisions ~~of the department~~ by submitting a written request stating the reason for the request within 30 days after the department's decision:

(a) approval or denial of an application for a permit pursuant to 82-4-231;

(b) approval or denial of an application for a prospecting permit pursuant to 82-4-226;

(c) approval or denial of an application to increase or reduce a permit area pursuant to 82-4-225;

(d) approval or denial of an application to renew or revise a permit pursuant to 82-4-221; or

(e) approval or denial of an application to transfer a permit pursuant to 82-4-238 or 82-4-250.

(2) The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing before the ~~board~~department under subsection (1)."

Section 177. Section 82-4-207, MCA, is amended to read:

"82-4-207. Rulemaking -- in situ coal gasification. (1) Within 1 year of October 1, 2011, and in accordance with subsection (3), the ~~board~~department shall adopt rules necessary to regulate underground mining using in situ coal gasification.

(2) Unless required by this part, the ~~board~~department may not adopt a rule to regulate in situ coal gasification that is more stringent than the comparable federal regulations or guidelines that address the same circumstances.

(3) The ~~board~~department shall solicit, document, consider, and address comments from the board of oil and gas conservation provided for in 2-15-3303 in developing rules pursuant to subsection (1)."

Section 178. Section 82-4-223, MCA, is amended to read:

"82-4-223. Surety bond. (1) Before a permit may be issued, the operator shall file with the department a bond payable to the state of Montana with surety satisfactory to the department in an amount to be determined by the department of not less than \$200 for each acre or fraction of an acre of the area of land affected, with a minimum bond of \$10,000, conditioned upon the faithful performance of the requirements set forth in this part and of the rules of the ~~board~~department. The operator may elect to deposit cash, negotiable bonds, or negotiable certificates of deposit of any bank organized or transacting business in the United States. The cash deposit or market value of these securities must be equal to or greater than the amount of the bond required for the bonded area. The level of bonding must be relative to the degree of disturbance projected by the original permit and the annual report. A political subdivision or agency of the state need not file a bond unless required to do so by the department. The department shall adjust the amount of bond required if the cost of reclamation changes.

(2) In determining the amount of the bond, the department shall take into consideration the character and nature of the overburden, the future suitable use of the land involved, and the cost of backfilling, grading,

1 highwall reduction, subsidence stabilization, water control, topsoiling, and reclamation to be required, but the
2 bond may not be less than the total estimated cost to the state of completing the work described in the
3 reclamation plan."

4
5 **Section 179.** Section 82-4-226, MCA, is amended to read:

6 **"82-4-226. Prospecting permit.** (1) Except as provided in subsection (7), prospecting by any person
7 on land not included in a valid strip-mining or underground-mining permit is unlawful without possessing a valid
8 prospecting permit issued by the department as provided in this section. A prospecting permit may not be
9 issued until the person submits an application, the application is examined, amended if necessary, and
10 approved by the department, and an adequate reclamation performance bond is posted, all of which
11 prerequisites must be done in conformity with the requirements of this part.

12 (2) An application for a prospecting permit filed pursuant to subsection (1) must be made in writing,
13 notarized, and submitted to the department upon forms prepared and furnished by it. The application must
14 include among other things a prospecting map and a prospecting reclamation plan of substantially the same
15 character as required for a surface-mining or underground-mining map and reclamation plan under this part.
16 The department shall determine by rules the precise nature of the required prospecting map and reclamation
17 plan. Any applicant who intends to prospect by means of core drilling shall specify the location and number of
18 holes to be drilled, methods to be used in sealing aquifers, and other information that may be required by the
19 department. The applicant shall state what types of prospecting and excavating techniques will be employed on
20 the affected land. The application must also include any other or further information that the department may
21 require.

22 (3) Before the department gives final approval to the prospecting permit application, the applicant
23 shall file with the department a reclamation and revegetation bond in a form and in an amount as determined in
24 the same manner for strip-mining or underground-mining reclamation and revegetation bonds under this part.

25 (4) In the event that the holder of a prospecting permit desires to strip mine or underground mine the
26 area covered by the prospecting permit and has fulfilled all the requirements for a strip-mining or underground-
27 mining permit, the department may permit the postponement of the reclamation of the acreage prospected if
28 that acreage is incorporated into the complete reclamation plan submitted with the application for a strip-mining

1 or underground-mining permit. Any land actually affected by prospecting or excavating under a prospecting
2 permit and not covered by the strip-mining or underground-mining reclamation plan must be promptly
3 reclaimed.

4 (5) The prospecting permit is valid for 1 year and is subject to renewal, suspension, and revocation in
5 the same manner as strip-mining or underground-mining permits under this part.

6 (6) The holder of the prospecting permit shall file with the department the same progress reports,
7 maps, and revegetation progress reports as are required of strip-mining or underground-mining operators under
8 this part.

9 (7) (a) Prospecting that is not conducted in an area designated unsuitable for coal mining pursuant to
10 82-4-227 or 82-4-228, that is not conducted for the purpose of determining the location, quality, or quantity of a
11 mineral deposit, and that does not remove more than 250 tons of coal is not subject to subsections (1) through
12 (6). However, a person who conducts prospecting described in this subsection (7)(a) shall file with the
13 department a notice of intent to prospect that contains the information required by the department before
14 commencing prospecting operations. If this prospecting substantially disturbs the natural land surface, it must
15 be conducted in accordance with the performance standards of the ~~board's~~ department's rules regulating the
16 conduct and reclamation of prospecting operations that remove coal. The department may inspect these
17 prospecting and reclamation operations at any reasonable time.

18 (b) (i) Prospecting conducted to determine the location, quality, or quantity of coal outside an area
19 designated unsuitable that is not included in a valid strip-mining or underground-mining permit, that does not
20 substantially disturb the land surface, and that does not remove more than 250 tons of coal is not subject to
21 subsections (1) and (2) but may not be conducted without a valid prospecting permit issued pursuant to
22 subsection (8).

23 (ii) For purposes of this subsection (7)(b), the drilling of coal prospecting holes, the installation and use
24 of associated disposal pits, and the installation of ground water monitoring wells does not constitute substantial
25 disturbance.

26 (8) (a) An application for a coal prospecting permit required by subsection (7)(b) must contain:

27 (i) the name, address, and telephone number of the person who seeks to prospect;

28 (ii) the name, address, and telephone number of the person's representative who will be present at and

1 responsible for conducting the prospecting activities;

2 (iii) a narrative describing the proposed prospecting area or a map of the prospecting area at a scale of
3 1:24,000 or greater showing:

4 (A) the general location of drill holes and trenches;

5 (B) existing and proposed roads;

6 (C) occupied dwellings;

7 (D) topographic features;

8 (E) bodies of water; and

9 (F) pipelines;

10 (iv) a copy of the documents upon which the applicant bases its legal right to prospect, including
11 documentation that the owners of the land affected have been notified and understand that the department will
12 make investigations and inspections to ensure compliance;

13 (v) a statement of the period of intended prospecting; and

14 (vi) a description of the method of prospecting to be used and the practices that will be followed to
15 protect the environment and reclaim disturbed areas, including plugging of prospecting holes, in accordance
16 with rules adopted by the ~~board~~ department.

17 (b) Within 10 working days of receipt of an application, the department shall notify the applicant in
18 writing as to whether the application is complete and preliminarily acceptable. If the department determines that
19 the application is not complete or not preliminarily acceptable, the department shall include a detailed
20 identification of information necessary to cure the deficiency.

21 (c) Within 5 working days of receipt of the applicant's response to the identified deficiencies, the
22 department shall review the response and notify the person as to whether the application is complete and
23 preliminarily acceptable. If the department determines the application is not complete or preliminarily
24 acceptable, the department shall notify the person in writing and include a detailed identification of information
25 necessary to make the application complete and preliminarily acceptable.

26 (d) When the department determines that the application is complete and preliminarily acceptable, the
27 department shall notify the applicant in writing. The notification must include the amount of bond that is required
28 to be posted in order for the permit to be issued.

(e) Upon receipt of the department's determination of preliminary acceptability, the applicant shall place an advertisement in a newspaper of general circulation in the locality of the proposed prospecting. The notice must describe the application and a place in the locality where the public may examine the application and must notify the public that it may submit written comments by delivering or mailing them to the department within 10 days following publication of the notice.

(f) After close of the public comment period, the department shall notify the applicant as to whether the application is acceptable. The department shall issue the notification within 5 working days of the close of the comment period if no comments are received and within 10 working days if comments are received. In the notice of acceptability, the department shall notify the applicant of any adjustment in the amount of the bond.

(g) A permit issued pursuant to this subsection (8) is subject to subsections (3) through (6)."

Section 180. Section 82-4-227, MCA, is amended to read:

"82-4-227. Refusal of permit -- applicant violator system. (1) An application for a prospecting, strip-mining, or underground-mining permit or major revision may not be approved by the department unless, on the basis of the information set forth in the application, in an onsite inspection, and in an evaluation of the operation by the department, the applicant has affirmatively demonstrated that the requirements of this part and rules will be observed and that the proposed method of operation, backfilling, grading, subsidence stabilization, water control, highwall reduction, topsoiling, revegetation, or reclamation of the affected area can be carried out consistently with the purpose of this part. The applicant for a permit or major revision has the burden of establishing that the application is in compliance with this part and the rules adopted under it.

(2) The department may not approve the application for a prospecting, strip-mining, or underground-mining permit when the area of land described in the application includes land that has special, exceptional, critical, or unique characteristics or when mining or prospecting on that area would adversely affect the use, enjoyment, or fundamental character of neighboring land that has special, exceptional, critical, or unique characteristics. For the purposes of this part, land is defined as having these characteristics if it possesses special, exceptional, critical, or unique:

(a) biological productivity, the loss of which would jeopardize certain species of wildlife or domestic stock;

(b) ecological fragility, in the sense that the land, once adversely affected, could not return to its former ecological role in the reasonably foreseeable future;

(c) ecological importance, in the sense that the particular land has such a strong influence on the total ecosystem of which it is a part that even temporary effects felt by it could precipitate a systemwide reaction of unpredictable scope or dimensions; or

(d) scenic, historic, archaeologic, topographic, geologic, ethnologic, scientific, cultural, or recreational significance. In applying the provisions of this subsection (2)(d), particular attention should be paid to the inadequate preservation previously accorded Plains Indian history and culture.

(3) The department may not approve an application for a strip- or underground-coal-mining permit or major revision unless the application affirmatively demonstrates that:

(a) the assessment of the probable cumulative impact of all anticipated mining in the area on the hydrologic balance has been made by the department and the proposed operation of the mining operation has been designed to prevent material damage to the hydrologic balance outside the permit area; and

(b) the proposed strip- or underground-coal-mining operation would not:

(i) interrupt, discontinue, or preclude farming on alluvial valley floors that are irrigated or naturally subirrigated, excluding undeveloped rangelands that are not significant to farming on alluvial valley floors and excluding land about which the department finds that if any farming will be interrupted, discontinued, or precluded, it is of such small acreage as to be of negligible impact on the farm's agricultural production; or

(ii) materially damage the quantity or quality of water in surface water or underground water systems that supply the valley floors described in subsection (3)(b)(i).

(4) Subsection (3)(b) does not affect those strip- or underground-coal-mining operations that in the year preceding the enactment of Public Law 95-87 produced coal in commercial quantities and were located within or adjacent to alluvial valley floors or had obtained specific permit approval by the department to conduct strip- or underground-coal-mining operations within alluvial valley floors. If coal deposits are precluded from being mined under this subsection, the director of the department shall certify to the secretary of interior that the mineral owner or lessee may be eligible for participation in coal exchange programs pursuant to section 510(5) of Public Law 95-87.

(5) (a) If the area proposed to be mined contains prime farmland, the department may not grant a

1 permit to mine coal on the prime farmland unless it finds in writing that the applicant:

2 (i) has the technological capability to restore the mined area, within a reasonable time, to levels of
3 yield equivalent to or higher than nonmined prime farmland in the surrounding area under equivalent levels of
4 management; and

5 (ii) can meet the soil reconstruction standards of 82-4-232(3).

6 (b) Nothing in this subsection (5) applies to a permit issued prior to August 3, 1977, or to any
7 revisions or renewals of the permit or to any existing strip- or underground-mining operations for which a permit
8 was issued prior to August 3, 1977.

9 (6) If the department finds that the overburden on any part of the area of land described in the
10 application for a prospecting, strip-mining, or underground-mining permit is such that experience in the state
11 with a similar type of operation upon land with similar overburden shows that substantial deposition of sediment
12 in streambeds, subsidence, landslides, or water pollution cannot feasibly be prevented, the department shall
13 delete that part of the land described in the application upon which the overburden exists. The burden is on the
14 applicant to demonstrate that any area should not be deleted under this subsection.

15 (7) If the department finds that the operation will constitute a hazard to a dwelling, public building,
16 school, church, cemetery, commercial or institutional building, public road, stream, lake, or other public
17 property, the department shall delete those areas from the prospecting, strip-mining, or underground-mining
18 permit application before it can be approved. Strip- or underground-coal-mining may not be allowed:

19 (a) within 300 feet of an occupied dwelling, unless waived by the owner;

20 (b) within 300 feet of any public building, school, church, community, or institutional building, or public
21 park;

22 (c) within 100 feet of a cemetery;

23 (d) within 100 feet of the outside right-of-way line of any public road, except where mine access roads
24 or haulage roads join the right-of-way line. The department may permit the roads to be relocated or the area
25 affected to lie within 100 feet of the road if, after public notice and opportunity for public hearing in the locality, a
26 written finding is made that the interests of the public and the landowners affected will be protected.

27 (8) Strip-mining or underground-mining may not be conducted within 500 feet of active or abandoned
28 underground mines in order to prevent breakthroughs and to protect health or safety of miners. However, the

1 department shall permit an operator to mine near, through, or partially through an abandoned underground
2 mine or closer to an active underground mine if:

3 (a) the nature, timing, and sequencing of specific strip-mine activities and specific underground-mine
4 activities are jointly approved by the department and the regulatory authority concerned with the health and
5 safety of underground miners; and

6 (b) the operations will result in improved resource recovery, abatement of water pollution, or
7 elimination of hazards to the health and safety of the public.

8 (9) The department may not approve an application for a strip- or underground-coal-mining operation
9 if the area proposed to be mined is included:

10 (a) within an area designated unsuitable for strip or underground coal mining; or

11 (b) within an area under review for this designation under an administrative proceeding, unless in an
12 area as to which an administrative proceeding has commenced pursuant to this part, the operator making the
13 permit application demonstrates that prior to January 1, 1977, the operator made substantial legal and financial
14 commitments in relation to the operation for which the operator is applying for a permit.

15 (10) A permit or major permit revision for a strip- or underground-coal-mining operation may not be
16 issued unless the applicant has affirmatively demonstrated by its coal conservation plan that failure to conserve
17 coal will not occur. The department may require the applicant to submit any information it considers necessary
18 for review of the coal conservation plan.

19 (11) Whenever information available to the department indicates that a strip- or underground-coal-
20 mining operation that is owned or controlled by the applicant or by any person who owns or controls the
21 applicant is currently in violation of Public Law 95-87, as amended, any state law required by Public Law 95-87,
22 as amended, or any law, rule, or regulation of the United States or of any department or agency in the United
23 States pertaining to air or water environmental protection, the department may not issue a strip- or
24 underground-coal-mining permit or amendment, other than an incidental boundary revision, until the applicant
25 submits proof that the violation has been corrected or is in the process of being corrected to the satisfaction of
26 the administering agency.

27 (12) The department may not issue a strip- or underground-coal-mining permit or amendment, other
28 than an incidental boundary revision, to any applicant that it finds, after an opportunity for hearing, owns or

controls any strip- or underground-coal-mining operation that has demonstrated a pattern of willful violations of Public Law 95-87, as amended, or any state law required by Public Law 95-87, as amended, when the nature and duration of the violations and resulting irreparable damage to the environment indicate an intent not to comply with the provisions of this part.

(13) Subject to valid existing rights, no strip- or underground-coal-mining operations except those that existed as of August 3, 1977, may be conducted:

(a) on lands within the boundaries of units of the national park system, the national wildlife refuge system, the national wilderness preservation system, the national system of trails, the wild and scenic rivers system, including study rivers designated under section 5(a) of the Wild and Scenic Rivers Act or study rivers or study river corridors established in any guidelines issued under that act, or national recreation areas designated by an act of congress; or

(b) on any federal lands within national forests, subject to the exceptions and limitations of 30 CFR 761.11(b) and the procedures of 30 CFR 761.13.

(14) (a) A person who is listed by the department in the applicant violator system maintained by the office of surface mining reclamation and enforcement of the U.S. department of the interior pursuant to the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201, et seq., as owning or controlling a strip-mining or underground-mining operation may challenge the ownership or control listing by filing a written request with the department for review of the listing. In the request, the person must include a written explanation of the basis for the challenge and any evidence the person wishes the department to consider. The department shall provide a written response within 60 days of receipt of the request for review.

(b) Within 30 days of receipt of the response pursuant to subsection (14)(a), the person who is listed may request a hearing before the ~~board-department~~ by submitting to the ~~board-department~~ a written request for hearing that states the reason for the request. The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to the hearing."

Section 181. Section 82-4-231, MCA, is amended to read:

"82-4-231. Submission of and action on reclamation plan. (1) As rapidly, completely, and effectively as the most modern technology and the most advanced state of the art will allow, each operator

1 granted a permit under this part shall reclaim and revegetate the land affected by the operation, except that
2 underground tunnels, shafts, or other subsurface excavations need not be revegetated. Under the provisions of
3 this part and rules adopted by the ~~board~~ department, an operator shall prepare and carry out a method of
4 operation, a plan of grading, backfilling, highwall reduction, subsidence stabilization, water control, and
5 topsoiling and a reclamation plan for the area of land affected by the operation. In developing a method of
6 operation and plans of grading, backfilling, highwall reduction, subsidence stabilization, water control,
7 topsoiling, and reclamation, all measures must be taken to eliminate damages to landowners and members of
8 the public, their real and personal property, public roads, streams, and all other public property from soil
9 erosion, subsidence, landslides, water pollution, and hazards dangerous to life and property.

10 (2) The reclamation plan must set forth in detail the manner in which the applicant intends to comply
11 with 82-4-232 through 82-4-234 and this section and the steps to be taken to comply with applicable air and
12 water quality laws and rules and any applicable health and safety standards.

13 (3) The application for a permit or major revision of a permit, which must contain the reclamation plan,
14 must be submitted to the department.

15 (4) The department shall determine whether the application is administratively complete. An
16 application is administratively complete if it contains information addressing each application requirement in 82-
17 4-222 and the rules implementing that section and all information necessary to initiate processing and public
18 review. The department shall notify the applicant in writing of its determination no later than 90 days after
19 submittal of the application. If the department determines that the application is not administratively complete, it
20 shall specify in the notice those items that the application must address. The application is presumed
21 administratively complete as to those requirements not specified in the notice.

22 (5) If the department determines that an environmental impact statement on the application is
23 required, it shall notify the applicant in writing at the same time it gives the applicant notice pursuant to
24 subsection (4).

25 (6) After the applicant receives notice that the application is administratively complete, the applicant
26 shall publish notice of filing of the application once a week for 4 consecutive weeks in a newspaper of general
27 circulation in the locality of the proposed operation. The department shall notify various local governmental
28 bodies, planning agencies, sewage and water treatment authorities, and water companies in the locality in

1 which the proposed mining will take place of the application and provide a reasonable time for them to submit
2 written comments. Any person having an interest that is or may be adversely affected or the officer or head of
3 any federal, state, or local governmental agency or authority may file written objections to the proposed initial or
4 revised application for permit or major revision within 30 days of the applicant's published notice. If written
5 objections are filed and an objector requests an informal conference, the department shall hold an informal
6 conference in the locality of the proposed operation within 30 days of receipt of the request. The department
7 shall notify the applicant and all parties to the informal conference of its decision and the reasons for its
8 decision within 60 days of the informal conference. The department may arrange with the applicant upon
9 request by any party to the administrative proceeding for access to the proposed mining area for the purpose of
10 gathering information relevant to the proceeding.

11 (7) The filing of written objections or a request for an informal conference may not preclude the
12 department from proceeding with its review of the application as specified in subsection (8).

13 (8) (a) The department shall review each administratively complete application and determine the
14 acceptability of the application. During the review, the department may propose modifications to the application
15 or delete areas from the application in accordance with the requirements of 82-4-227. A complete application is
16 considered acceptable when the application is in compliance with all of the applicable requirements of this part
17 and the regulatory program pursuant to this part.

18 (b) If the applicant significantly modifies the application after the application has been determined
19 administratively complete in accordance with subsection (4), the department shall under this section either deny
20 the application or conduct a new review, including an administrative completeness determination, public notice,
21 and objection period.

22 (c) If an environmental impact statement is determined to be necessary prior to making a permit
23 decision, the department shall complete and publish the final environmental impact statement at least 15 days
24 prior to the date of issuance of the written findings pursuant to subsection (8)(f).

25 (d) Except as provided in 75-1-205(4) and 75-1-208(4)(b), within 120 days after it determines that an
26 application is administratively complete, the department shall notify the applicant in writing whether the
27 application is or is not acceptable. If the application is not acceptable, the department shall set forth the reasons
28 why it is not acceptable, and it may propose modifications, delete areas, or reject the entire application. All

1 items not specified as unacceptable in the department's notification are presumed to be acceptable. Except as
2 provided in 75-1-208(4)(b), if the applicant revises the application in response to a notice of unacceptability, the
3 department shall review the revised application and notify the applicant in writing within 120 days of the date of
4 receipt whether the revised application is acceptable. If the revision constitutes a significant modification under
5 subsection (8)(b), the department shall conduct a new review, beginning with an administrative completeness
6 determination.

7 (e) When the application is determined to be acceptable, the department shall publish notice of its
8 determination once a week for 2 consecutive weeks in a newspaper of general circulation in the locality of the
9 proposed operation. Any person having an interest that is or may be adversely affected may file a written
10 objection to the determination within 10 days of the department's last published notice. If a written objection is
11 filed and an objector requests an informal conference, the department shall hold an informal conference in the
12 locality of the proposed operation within 20 days of receipt of the request. The department shall notify the
13 applicant and all parties to the informal conference of its decision and the reasons for the decision within 10
14 days of the informal conference.

15 (f) Except as provided in 75-1-205(4) and 75-1-208(4)(b), the department shall prepare written
16 findings granting or denying the permit or major revision application in whole or in part not later than 45 days
17 from the date the application is determined acceptable. However, if lands subject to the federal lands program
18 are included in the application for permit or major revision, the department shall prepare and submit written
19 findings to the federal regulatory authority. If the department's decision is to grant the permit, the department
20 shall issue the permit on the date of its written finding or, if any federal concurrence is necessary, on the date
21 when the concurrence is obtained. If the application is denied, specific reasons for the denial must be set forth
22 in the written notification to the applicant.

23 (g) If the department fails to act within the times specified in this subsection (8), it shall immediately
24 ~~notify the board~~ record in writing of its failure to comply and the reasons for the failure to comply.

25 (9) The applicant, a landowner, or any person with an interest that is or may be adversely affected by
26 the department's permit decision may within 30 days of that decision submit a written notice requesting a
27 hearing. The notice must contain the grounds upon which the requester contends that the decision is in error.
28 The hearing must be started within 30 days of the request. For purposes of a hearing, the ~~board~~ department or

1 its hearings officer may order site inspections of the area pertinent to the application. The ~~board~~department
2 shall within 20 days of the hearing notify the person who requested the hearing, by certified mail, and all other
3 persons, by regular mail, of the findings and decisions. A person who presided at the informal conference may
4 not preside at the hearing or participate in the decision.

5 (10) In addition to the method of operation, grading, backfilling, highwall reduction, subsidence
6 stabilization, water control, topsoiling, and reclamation requirements of this part and rules adopted under this
7 part, the operator, consistent with the directives of subsection (1), shall:

8 (a) bury under adequate fill all toxic materials, shale, mineral, or any other material determined by the
9 department to be acid-producing, toxic, undesirable, or creating a hazard;

10 (b) as directed by rules, seal off tunnels, shafts, or other openings or any breakthrough of water
11 creating a hazard;

12 (c) impound, drain, or treat all runoff or underground mine waters so as to reduce soil erosion,
13 damage to grazing and agricultural lands, and pollution of surface and subsurface waters;

14 (d) remove or bury all metal, lumber, and other refuse resulting from the operation;

15 (e) use explosives in connection with the operation only in accordance with department regulations
16 designed to minimize noise, damage to adjacent lands, and water pollution and ensure public safety and for
17 other purposes;

18 (f) adopt measures to prevent land subsidence unless the department approves a plan for inducing
19 subsidence into an abandoned operation in a predictable and controlled manner, with measures for grading,
20 topsoiling, and revegetating the subsided land surface. In order for a controlled subsidence plan to be
21 approved, the applicant is required to show that subsidence will not cause a direct or indirect hazard to any
22 public or private buildings, roads, facilities, or use areas, constitute a hazard to human life or health or to
23 domestic livestock or a viable agricultural operation, or violate any other restrictions the department may
24 consider necessary.

25 (g) stockpile and protect from erosion all mining and processing wastes until these wastes can be
26 disposed of according to the provisions of this part;

27 (h) deposit as much stockpiled waste material as possible back into the mine voids upon
28 abandonment in a manner that will prevent or minimize land subsidence. The remaining waste material must be

1 disposed of as provided by this part and the rules of the ~~board~~ department.

2 (i) seal all portals, entryways, drifts, shafts, or other openings between the surface and underground
3 mine workings when no longer needed;

4 (j) to the extent possible using the best technology currently available, minimize disturbances and
5 adverse impacts of the operation on fish, wildlife, and related environmental values and achieve enhancement
6 of those resources when practicable;

7 (k) minimize the disturbances to the prevailing hydrologic balance at the mine site and in adjacent
8 areas and to the quality and quantity of water in surface water and ground water systems both during and after
9 strip- or underground-coal-mining operations and during reclamation by:

10 (i) avoiding acid or other toxic mine drainage by measures including but not limited to:

11 (A) preventing or removing water from contact with toxic-producing deposits;

12 (B) treating drainage to reduce toxic content that adversely affects downstream water upon being
13 released to watercourses;

14 (C) casing, sealing, or otherwise managing boreholes, shafts, and wells and keeping acid or other
15 toxic drainage from entering ground and surface waters;

16 (ii) (A) conducting strip- or underground-mining operations so as to prevent, to the extent possible
17 using the best technology currently available, additional contributions of suspended solids to streamflow or
18 runoff outside the permit area, but the contributions may not be in excess of requirements set by applicable
19 state or federal law;

20 (B) constructing any siltation structures pursuant to subsection (10)(k)(ii)(A) prior to commencement
21 of strip- or underground-mining operations, with the structures to be certified by a qualified registered engineer
22 and to be constructed as designed and as approved in the reclamation plan;

23 (iii) cleaning out and removing temporary or large settling ponds or other siltation structures from
24 drainways after disturbed areas are revegetated and stabilized and depositing the silt and debris at a site and in
25 a manner approved by the department;

26 (iv) restoring recharge capacity of the mined area to approximate premining conditions;

27 (v) avoiding channel deepening or enlargement in operations that requires the discharge of water
28 from mines;

- (vi) preserving throughout the mining and reclamation process the essential hydrologic functions of alluvial valley floors in the arid and semiarid areas of the country;
- (vii) designing and constructing reclaimed channels of intermittent streams and perennial streams to ensure long-term stability; and
- (viii) any other actions that the department may prescribe;
- (l) conduct strip- or underground-mine operations in accordance with the approved coal conservation plan;
- (m) stabilize and protect all surface areas, including spoil piles, to effectively control air pollution;
- (n) seal all auger holes with an impervious and noncombustible material in order to prevent drainage except when the department determines that the resulting impoundment of water in the auger holes may create a hazard to the environment or the public health and safety;
- (o) develop contingency plans to prevent sustained combustion;
- (p) refrain from construction of roads or other access ways up a streambed or drainage channel or in proximity to the channel so as to seriously alter the normal flow of water;
- (q) meet other criteria that are necessary to achieve reclamation in accordance with the purposes of this part, taking into consideration the physical, climatological, and other characteristics of the site;
- (r) with regard to underground mines, eliminate fire hazards and otherwise eliminate conditions that constitute a hazard to health and safety of the public;
- (s) locate openings for all new drift mines working acid-producing or iron-producing coal seams in a manner that prevents a gravity discharge of water from the mine.
- (11) An operator may not throw, dump, pile, or permit the throwing, dumping, or piling or otherwise placing of any overburden, stones, rocks, mineral, earth, soil, dirt, debris, trees, wood, logs, or any other materials or substances of any kind or nature beyond or outside of the area of land that is under permit and for which a bond has been posted under 82-4-223 or place the materials described in this section in a way that normal erosion or slides brought about by natural physical causes will permit the materials to go beyond or outside of that area of land. An operator shall conduct the strip- or underground-mining operation in a manner that protects areas outside the permit area."

1 **Section 182.** Section 82-4-232, MCA, is amended to read:

2 **"82-4-232. Area mining required -- bond -- alternative plan.** (1) (a) Area strip mining, a method of
3 operation that does not produce a bench or fill bench, is required where strip mining is proposed. The area of
4 land affected must be backfilled and graded to the approximate original contour of the land. However:

5 (i) consistent with the adjacent unmined landscape elements, the operator may propose and the
6 department may approve regraded topography gentler than premining topography in order to enhance the
7 postmining land use and develop a postmining landscape that will provide greater moisture retention, greater
8 stability, and reduced soil losses from runoff and erosion;

9 (ii) postmining slopes may not exceed the angle of repose or lesser slope as is necessary to achieve a
10 long-term static safety factor of 1.3 or greater and to prevent slides;

11 (iii) permanent impoundments may be approved if they are suitable for the postmining land use and
12 otherwise meet the requirements of this part, as provided by ~~board~~department rules; and

13 (iv) reclaimed topography must be suitable for the approved postmining land use.

14 (b) Spoil from the first cut is not required to be transported to the last cut if highwalls are eliminated,
15 box cut spoils are graded to blend in with the surrounding terrain, and the approximate original contour of the
16 land is achieved.

17 (c) When directed by the department, the operator shall construct in the final grading diversion
18 ditches, depressions, or terraces that will accumulate or control the water runoff.

19 (2) In addition to the backfilling and grading requirements, the operator's method of operation on
20 steep slopes may be regulated and controlled according to rules adopted by the ~~board~~department. These rules
21 may require any measure to accomplish the purpose of this part.

22 (3) For coal mining on prime farmlands, the ~~board~~department shall establish by rule specifications for
23 soil removal, storage, replacement, and reconstruction, and the operator must as a minimum be required to:

24 (a) (i) segregate the A horizon of the natural soil, except when it can be shown that other available
25 soil materials will create a final soil having a greater productive capacity; and

26 (ii) if not used immediately, stockpile this material separately from other spoil and provide needed
27 protection from wind and water erosion or contamination by other acid or toxic material;

28 (b) (i) segregate the B horizon of the natural soil, or underlying C horizon or other strata, or a

1 combination of the horizons or other strata that are shown to be both texturally and chemically suitable for plant
2 growth and that can be shown to be equally or more favorable for plant growth than the B horizon in sufficient
3 quantities to create in the regraded final soil a root zone of comparable depth and quality to that that existed in
4 the natural soil; and

5 (ii) if not used immediately, stockpile this material separately from other spoil and provide needed
6 protection from wind and water erosion or contamination by acid or toxic material;

7 (c) replace and regrade the root zone material described in subsection (3)(b) with proper compaction
8 and uniform depth over the regraded spoil material; and

9 (d) redistribute and grade in a uniform manner the surface soil horizon described in subsection (3)(a).

10 (4) All available topsoil must be removed in a separate layer, guarded from erosion and pollution, and
11 kept in a condition so that it can sustain vegetation of at least the quality and variety it sustained prior to
12 removal. However, the operator shall accord substantially the same treatment to any subsurface deposit of
13 material that is capable, as determined by the department, of supporting surface vegetation virtually as well as
14 the present topsoil. After the operation has been backfilled and graded, the topsoil or the best available
15 subsurface deposit of material that is best able to support vegetation must be returned as the top layer.

16 (5) As determined by rules of the ~~board~~ department, time limits must be established requiring
17 backfilling, grading, subsidence stabilization, water control, highwall reduction, topsoiling, planting, and
18 revegetation to be kept current. All backfilling, subsidence stabilization, sealing, grading, and topsoiling must be
19 completed before necessary equipment is moved from the operation.

20 (6) (a) The permittee may file an application with the department for the release of all or part of a
21 performance bond. The application must contain a proposed public notice of the precise location of the land
22 affected, the number of acres for which bond release is sought, the permit and the date approved, the amount
23 of the bond filed and the portion sought to be released, the type and appropriate dates of reclamation work
24 performed, and a description of the results achieved as they relate to the permittee's approved reclamation
25 plan. In addition, as part of any bond release application, the permittee shall submit copies of letters that the
26 permittee has sent to adjoining property owners, local governmental bodies, planning agencies, and sewage
27 and water treatment authorities or water companies in the locality of the operation, notifying them of the
28 permittee's intention to seek release from the bond.

1 (b) The department shall determine whether the application is administratively complete. An
2 application is administratively complete if it includes:

- 3 (i) the location and acreage of the land for which bond release is sought;
4 (ii) the amount of bond release sought;
5 (iii) a description of the completed reclamation, including the date of performance;
6 (iv) a discussion of how the results of the completed reclamation satisfy the requirements of the
7 approved reclamation plan; and
8 (v) information required by rules implementing this part.

9 (c) The department shall notify the applicant in writing of its determination no later than 60 days after
10 submittal of the application. If the department determines that the application is not administratively complete, it
11 shall specify in the notice those items that the application must address. After an application for bond release
12 has been determined to be administratively complete by the department, the permittee shall publish a public
13 notice that has been approved as to form and content by the department at least once a week for 4 successive
14 weeks in a newspaper of general circulation in the locality of the mining operation.

15 (d) Any person with a valid legal interest that might be adversely affected by the release of a bond or
16 the responsible officer or head of any federal, state, or local governmental agency that has jurisdiction by law or
17 special expertise with respect to any environmental, social, or economic impact involved in the operation or is
18 authorized to develop and enforce environmental standards with respect to the operation may file written
19 objections to the proposed release of bond to the department within 30 days after the last publication of the
20 notice. If written objections are filed and a hearing is requested, the department shall hold a public hearing in
21 the locality of the operation proposed for bond release or in Helena, at the option of the objector, within 30 days
22 of the request for hearing. The department shall inform the interested parties of the time and place of the
23 hearing. The date, time, and location of the public hearing must be advertised by the department in a
24 newspaper of general circulation in the locality for 2 consecutive weeks. Within 30 days after the hearing, the
25 department shall notify the permittee and the objector of its final decision.

26 (e) Without prejudice to the rights of the objector or the permittee or the responsibilities of the
27 department pursuant to this section, the department may establish an informal conference to resolve written
28 objections.

1 (f) For the purpose of the hearing under subsection (6)(d), the department may administer oaths,
2 subpoena witnesses or written or printed materials, compel the attendance of witnesses or the production of
3 materials, and take evidence, including but not limited to conducting inspections of the land affected and other
4 operations carried on by the permittee in the general vicinity. A verbatim record of each public hearing required
5 by this section must be made, and a transcript must be made available on the motion of any party or by order of
6 the department.

7 (g) If the applicant significantly modifies the application after the application has been determined to
8 be administratively complete, the department shall conduct a new review, including an administrative
9 completeness determination. A significant modification includes but is not limited to:

10 (i) the notification of an additional property owner, local governmental body, planning agency, or
11 sewage and water treatment authority of the permittee's intention to seek a bond release;

12 (ii) a material increase in the acreage for which a bond release is sought or in the amount of bond
13 release sought; or

14 (iii) a material change in the reclamation for which a bond release is sought or the information used to
15 evaluate the results of that reclamation.

16 (h) The department shall, within 30 days of determining that the application is administratively
17 complete or as soon as weather permits, conduct an inspection and evaluation of the reclamation work
18 involved. In the evaluation, the department shall consider, among other things, the degree of difficulty in
19 completing any remaining reclamation, whether pollution of surface and subsurface water is occurring, the
20 probability of continuance or future occurrence of the pollution, and the estimated cost of abating the pollution.

21 (i) The department shall review each administratively complete application to determine the
22 acceptability of the application. A complete application is acceptable if the application is in compliance with all
23 of the applicable requirements of this part, the rules adopted under this part, and the permit.

24 (j) (i) The department shall notify the applicant in writing regarding the acceptability of the application
25 no later than 60 days from the date of the inspection.

26 (ii) If the department determines that the application is not acceptable, it shall specify in the notice
27 those items that the application must address.

28 (iii) If the applicant revises the application in response to a notice of unacceptability, the department

1 shall review the revised application and notify the applicant in writing within 60 days of the date of receipt as to
2 whether the revised application is acceptable.

3 (iv) If the revision constitutes a significant modification, the department shall conduct a new review,
4 beginning with an administrative completeness determination.

5 (v) A significant modification includes but is not limited to:

6 (A) the notification of an additional property owner, local governmental body, planning agency, or
7 sewage and water treatment authority of the permittee's intention to seek a bond release;

8 (B) a material increase in the acreage for which a bond release is sought or the amount of bond
9 release sought; or

10 (C) a material change in the reclamation for which a bond release is sought or the information used to
11 evaluate the results of that reclamation.

12 (k) The department shall release the bond in whole or in part if it is satisfied the reclamation covered
13 by the bond or portion of the bond has been accomplished as required by this part according to the following
14 schedule:

15 (i) When the permittee completes the plugging, backfilling, regrading, and drainage control of a
16 bonded area in accordance with the approved reclamation plan, the department shall release 60% of the bond
17 or collateral for the applicable permit area.

18 (ii) After revegetation has been established on the regraded lands in accordance with the approved
19 reclamation plan, the department shall, for the period specified for operator responsibility of reestablishing
20 revegetation, retain that amount of bond for the revegetated area that would be sufficient for a third party to
21 cover the cost of reestablishing revegetation. Whenever a silt dam is to be retained as a permanent
22 impoundment, the portion of bond may be released under this subsection (6)(k)(ii) if provisions for sound future
23 maintenance by the operator or the landowner have been made with the department. Any part of the bond may
24 not be released under this subsection (6)(k)(ii):

25 (A) as long as the lands to which the release would be applicable are contributing suspended solids to
26 streamflow or runoff outside the permit area in excess of the requirements of 82-4-231(10)(k); or

27 (B) before soil productivity for prime farm lands to which the release would be applicable has returned
28 to equivalent levels of yield as nonmined land of the same soil type in the surrounding area under equivalent

1 management practices, as determined from the soil survey.

2 (iii) When the permittee has successfully completed all prospecting, mining, and reclamation activities,
3 the department shall release the remaining portion of the bond, but not before the expiration of the period
4 specified for responsibility and not until all reclamation requirements of this part are fully met.

5 (l) If the department disapproves the application for release of the bond or a portion of the bond, it
6 shall:

7 (i) provide to the permittee detailed written findings demonstrating that the reclamation covered by the
8 bond or a portion of the bond has not been accomplished as required by this part; and

9 (ii) recommend corrective actions necessary to secure the release and allowing opportunity for a public
10 hearing.

11 (m) When an application for total or partial bond release is filed with the department, it shall notify the
12 municipality or county in which a prospecting or mining operation is located by certified mail at least 30 days
13 prior to the release of all or a portion of the bond.

14 (7) All disturbed areas must be reclaimed in a timely manner to conditions that are capable of
15 supporting the land uses that they were capable of supporting prior to any mining or to higher or better uses as
16 approved pursuant to subsection (8).

17 (8) (a) An operator may propose a higher or better use as an alternative postmining land use. If the
18 landowner is not the operator, the operator shall submit written documentation of the concurrence of the
19 landowner or the land management agency with jurisdiction over the land. The department may approve the
20 proposed alternative postmining land use only if it meets all of the following criteria:

21 (i) There is a reasonable likelihood for achievement of the alternative land use.

22 (ii) The alternative land use does not present any actual or probable hazard to the public health or
23 safety or any threat of water diminution or pollution.

24 (iii) The alternative land use will not:

25 (A) be impractical or unreasonable;

26 (B) be inconsistent with applicable land use policies or plans;

27 (C) involve unreasonable delay in implementation; or

28 (D) cause or contribute to violation of federal, state, or local law.

(b) As used in this section, the term "landowner" includes a person who has sold the surface estate to the operator with an option to repurchase the surface estate after mining and reclamation are complete.

(9) The reclamation plan must incorporate appropriate wildlife habitat enhancement features that are integrated with cropland, grazing land, pastureland, land occasionally cut for hay, or other uses in order to enhance habitat diversity, with emphasis on big game animals, game birds, and threatened and endangered species that have been documented to live in the area of land affected, and to enhance wetlands and riparian areas along rivers and streams and bordering ponds and lakes. Incorporation of wildlife habitat enhancement features does not constitute a change in land use to fish and wildlife habitat and may not interfere with the designated land use.

(10) Facilities existing prior to mining, including but not limited to public roads, utility lines, railroads, or pipelines, may be replaced as part of the reclamation plan."

Section 183. Section 82-4-234, MCA, is amended to read:

"82-4-234. Commencement of reclamation. The operator shall commence the reclamation of the area of land affected by the operator's operation as soon as possible after the beginning of strip mining or underground mining of that area in accordance with plans previously approved by the department. Those grading, backfilling, subsidence stabilization, topsoiling, and water management practices that are approved in the plans must be kept current with the operation as defined by rules of the ~~board~~ department, and a permit or supplement to a permit may not be issued if, in the discretion of the department, these practices are not current."

Section 184. Section 82-4-235, MCA, is amended to read:

"82-4-235. Determination of successful revegetation -- final bond release. (1) Success of revegetation must be judged on the effectiveness of the vegetation for the approved postmining land use, the extent of cover compared to the cover occurring in the natural vegetation, and the requirements of 82-4-233. Standards for success are:

(a) for areas reclaimed for use as cropland, crop production must be at least equal to that achieved prior to mining based on comparison with historical data, comparable reference areas, or United States

1 department of agriculture publications applicable to the area of the operation, as referenced in rules adopted by
2 the ~~board~~ department;

3 (b) for areas reclaimed for use as pastureland or grazing land, the ground cover and production of
4 living plants on the revegetated area must be at least equal to that of a reference area or other standard
5 approved by the department as appropriate for the postmining land use;

6 (c) for areas reclaimed for use as fish and wildlife habitat, forestry, or recreation, success of
7 revegetation must be determined on the basis of approved tree density standards or shrub density standards,
8 or both, and vegetative ground cover required to achieve the postmining land use;

9 (d) reestablished vegetation is considered effective if the postmining land use is achieved and erosion
10 is controlled;

11 (e) reestablished vegetation is considered permanent if it is diverse and effective at the end of the 10-
12 year responsibility period specified under subsection (2); and

13 (f) plant species composing the reestablished vegetation are considered to have the same seasonal
14 characteristics of growth as the original vegetation, to be capable of regeneration and plant succession, and to
15 be compatible with the plant and animal species of the area if those plant species are native to the area or are
16 introduced species approved by the department as desirable and necessary to achieve the postmining land
17 use.

18 (2) Inspection and evaluation of reclaimed vegetative cover must be made as soon as possible
19 following an application for final bond release to determine if a satisfactory stand has been established. If the
20 department determines that a satisfactory vegetative cover has been established, it shall release the remaining
21 bond held on the area reclaimed after public notice and an opportunity for hearing as provided in 82-4-232(6).
22 Except as provided in subsection (3), the remaining bond may not be released prior to a period of 10 years after
23 the last year of augmented seeding, fertilizing, irrigation, or other work required under this part for those
24 operations or portions of operations that were seeded after May 2, 1978, or prior to a period of 5 years after
25 initial planting for all exploration activities and all other operations.

26 (3) (a) Vegetative cover of water management facilities and other support facilities composing no
27 more than 10% of the area for which bond release is sought is not subject to the 10-year responsibility period.
28 Water management facilities and other support facilities include sedimentation ponds, diversions, other water

1 management structures, soils stockpiles, and access roads.

2 (b) Vegetative cover of water management facilities and other support facilities composing no more
3 than 10% of the area for which bond release is sought is eligible for bond release if the vegetative cover
4 otherwise meets the reclamation standards in subsection (1).

5 (4) (a) Notwithstanding the provisions of subsections (2) and (3), on land from which coal was
6 removed prior to May 3, 1978, and on land from which coal was not removed and that was not used, disturbed,
7 or redisturbed in connection with this part after May 2, 1978, pursuant to a permit issued by the department
8 under this part, the department may approve for release a bond on an area of reclaimed vegetation that meets
9 the following criteria:

10 (i) it was seeded using a seed mixture that was approved by the department under the criteria
11 established pursuant to 82-4-233 and that included introduced species; and

12 (ii) at least one of the following conditions exists:

13 (A) the standards of 82-4-233(1) are otherwise achieved;

14 (B) the operator has demonstrated substantial usefulness of the reclaimed vegetation for grazing of
15 livestock;

16 (C) the operator demonstrates that the reclaimed vegetation has substantial value as a habitat
17 component for wildlife present in the area; or

18 (D) the topography and soils are suitable for conversion to cropland or hayland consistent with the
19 standards of 82-4-232 and the department approves and the operator completes that conversion.

20 (b) On lands that meet the criteria described in subsection (4)(a), interseeding or supplemental
21 planting may be performed without reinitiating the liability period provided in subsection (2)."

22

23 **Section 185.** Section 82-4-239, MCA, is amended to read:

24 **"82-4-239. Reclamation.** (1) The department may have reclamation work done by its employees, by
25 employees of other governmental agencies, by soil conservation districts, or through contracts with qualified
26 persons. The ~~board~~ department may construct, operate, and maintain plants for the control and treatment of
27 water pollution resulting from mine drainage.

28 (2) Any funds or any public works programs available to the department must be used and expended

1 to reclaim and rehabilitate lands that have been subjected to strip mining or underground mining and that have
2 not been reclaimed and rehabilitated in accordance with the standards of this part. The department shall
3 cooperate with federal, state, and private agencies to engage in cooperative projects under this section.

4 (3) Agents, employees, or contractors of the department may enter upon any land for the purpose of
5 conducting studies or exploratory work to determine whether the land has been strip- or underground-mined
6 and not reclaimed and rehabilitated in accordance with the requirements of this part and to determine the
7 feasibility of restoration, reclamation, abatement, control, or prevention of any adverse effects of past coal-
8 mining practices. Upon request of the director of the department, the attorney general shall bring an injunctive
9 action to restrain any interference with the exercise of the right to enter and inspect granted in this subsection.
10 The action must be brought in the county in which the mine is located.

11 (4) (a) The department shall take the actions described in subsection (4)(b) when it makes a finding
12 of fact that:

13 (i) land or water resources have been adversely affected by past coal-mining practices;

14 (ii) the adverse effects are at a stage at which, in the public interest, action to restore, reclaim, abate,
15 control, or prevent should be taken; and

16 (iii) the owners of the land or water resources where entry must be made to restore, reclaim, abate,
17 control, or prevent the adverse effects of past coal-mining practices are not known or readily available or the
18 owners will not give permission for the department or its agents, employees, or contractors to enter upon the
19 property to restore, reclaim, abate, control, or prevent the adverse effects of past coal-mining practices.

20 (b) After giving notice by mail to the owner, if known, and any purchaser under contract for deed, if
21 known, or, if neither is known, by posting notice on the premises and advertising in a newspaper of general
22 circulation in the county in which the land lies, the agents, employees, or contractors of the department may
23 enter on the property adversely affected by past coal-mining practices and on any other property necessary for
24 access to the mineral property to do all things necessary or expedient to restore, reclaim, abate, control, or
25 prevent the adverse effects of past coal-mining practices.

26 (c) Action taken under subsection (4)(b) is not an act of condemnation of property or of trespass, but
27 rather is an exercise of the power granted by Article IX, sections 1 and 2, of the Montana constitution.

28 (5) (a) Within 6 months after the completion of projects to restore, reclaim, abate, control, or prevent

adverse effects of past coal-mining practices on privately owned land, the department shall itemize the money expended and may file a statement of those expenses in the office of the clerk and recorder of the county in which the land lies, together with a notarized appraisal by an independent appraiser of the value of the land before the restoration, reclamation, abatement, control, or prevention of adverse effects of past coal-mining practices if the money expended resulted in a significant increase in property value. The statement constitutes a lien upon the land. The lien may not exceed the amount determined by the appraisal to be the increase in the market value of the land as a result of the restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal-mining practices. A lien under this subsection (5)(a) may not be filed against the property of a person who owned the surface prior to May 2, 1977, and who did not consent to, participate in, or exercise control over the mining operation that necessitated the reclamation performed under this part.

(b) The landowner may petition within 60 days of the filing of the lien to determine the increase in the market value of the land as a result of the restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal-mining practices. The amount reported to be the increase in value of the premises constitutes the amount of the lien and must be recorded with the statement provided for in this section. Any party aggrieved by the decision may appeal as provided by law.

(c) The lien provided in this section must be recorded at the office of the county clerk and recorder. The statement constitutes a lien upon the land as of the date of the expenditure of the money and has priority as a lien second only to the lien of real estate taxes imposed upon the land.

(6) The department may acquire the necessary property by gift or purchase. A gift or purchase must be approved by the board of land commissioners. If the property cannot be acquired by gift or purchase at a reasonable cost, proceedings may be instituted in the manner provided in Title 70, chapter 30, against all nonaccepting landholders if:

(a) the property is necessary for successful reclamation;

(b) the acquired land after restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal-mining practices will serve recreation and historic purposes or conservation and reclamation purposes or provide open space benefits; and

(c) (i) permanent facilities, such as treatment plants or relocated stream channels, will be constructed on the land for the restoration, reclamation, abatement, control, or prevention of the adverse effects of past

1 strip- or underground-coal-mining practices; or

2 (ii) acquisition of coal refuse disposal sites and all coal refuse on the land will serve the purposes of
3 this part because public ownership is desirable to meet emergency situations and prevent recurrences of the
4 adverse effects of past coal-mining practices."
5

6 **Section 186.** Section 82-4-251, MCA, is amended to read:

7 **"82-4-251. Noncompliance -- suspension of permits.** (1) If it is determined on the basis of an
8 inspection that the permittee is or that any condition or practice exists in violation of any requirement of this part
9 or any permit condition required by this part that creates an imminent danger to the health or safety of the
10 public or is causing or can reasonably be expected to cause significant and imminent environmental harm to
11 land, air, or water resources, the director of the department or an authorized representative shall immediately
12 order cessation of the operation or the portion of the operation relevant to the condition, practice, or violation.
13 The cessation order remains in effect until the director or an authorized representative determines that the
14 condition, practice, or violation has been abated or until modified, vacated, or terminated by the director or an
15 authorized representative pursuant to subsection (5). If the director or an authorized representative finds that
16 the ordered cessation of the operation or any portion of the operation will not completely abate the imminent
17 danger to the health or safety of the public or the significant and imminent environmental harm to land, air, or
18 water resources, the director or the authorized representative shall, in addition to the cessation order, impose
19 affirmative obligations requiring any steps that the director or the authorized representative considers
20 necessary to abate the imminent danger or the significant environmental harm.

21 (2) When, on the basis of an inspection, the department determines that any permittee is in violation
22 of any requirement of this part or any permit condition required by this part that does not create an imminent
23 danger to the health or safety of the public or cannot be reasonably expected to cause significant and imminent
24 environmental harm to land, air, or water resources, the director or an authorized representative shall issue a
25 notice to the permittee or the permittee's agent fixing a reasonable time, not exceeding 90 days, for the
26 abatement of the violation and providing opportunity for public hearing. If, upon expiration of the period of time
27 as originally fixed or subsequently extended, for good cause shown and upon the written finding of the director
28 or an authorized representative, the director or an authorized representative finds that the violation has not

1 been abated, the director or an authorized representative shall immediately order a cessation of the operation
2 or the portion of the operation relevant to the violation. The cessation order remains in effect until the director or
3 an authorized representative determines that the violation has been abated or until modified, vacated, or
4 terminated by the director or an authorized representative pursuant to subsection (5). In the order of cessation
5 issued under this subsection, the director shall determine the steps necessary to abate the violation in the most
6 expeditious manner possible and shall include the necessary measures in the order.

7 (3) When, on the basis of an inspection, the director or an authorized representative determines that a
8 pattern of violations of any requirements of this part or any permit conditions required by this part exists or has
9 existed and if the director or an authorized representative also finds that the violations are caused by the
10 unwarranted failure of the permittee to comply with any requirements of this part or any permit conditions or that
11 the violations are willfully caused by the permittee, the director or an authorized representative shall issue an
12 order to the permittee to show cause as to why the permit should not be suspended or revoked and shall
13 provide opportunity for a public hearing. If a hearing is requested, the director shall inform all interested parties
14 of the time and place of the hearing. Upon the permittee's failure to show cause as to why the permit should not
15 be suspended or revoked, the director or an authorized representative shall suspend or revoke the permit. A
16 permittee may request a contested case hearing on a permit suspension or revocation by filing a request for
17 hearing, specifying the grounds for the request, within 30 days of receipt of the order of suspension or
18 revocation. The order is effective upon expiration of the period for requesting a hearing or, if a hearing is
19 requested, upon issuance of a final order by the ~~board~~ department. The hearing must be conducted in
20 accordance with the requirements of Title 2, chapter 4, part 6. When a permit has been revoked, the
21 department may order the performance bond forfeited.

22 (4) Any additional permits held by an operator whose mining permit has been revoked must be
23 suspended, and the operator is not eligible to receive another permit or to have the suspended permits
24 reinstated until the operator has complied with all the requirements of this part with respect to former permits
25 issued to the operator. An operator who has forfeited a bond is not eligible to receive another permit unless the
26 land for which the bond was forfeited has been reclaimed without cost to the state or the operator has paid into
27 the reclamation account a sum together with the value of the bond the department finds adequate to reclaim the
28 lands.

(5) Notices and orders issued pursuant to this section must set forth with reasonable specificity the nature of the violation and the remedial action required, the period of time established for abatement, and a reasonable description of the portion of the operation to which the notice or order applies. Each notice or order issued under this section must be given promptly to the permittee or the permittee's agent by the department, by the director, or by the authorized representative who issued the notice or order. All notices and orders must be in writing and be signed by the authorized representatives. Any notice or order issued pursuant to this section may be modified, vacated, or terminated by the director or an authorized representative. However, any notice or order issued pursuant to this section that requires cessation of mining by the operator expires within 30 days of actual notice to the operator unless an informal public hearing, if requested by the person to whom the notice or order was issued, is held at the site or within such reasonable proximity to the site that any viewings of the site can be conducted during the course of the hearing. If the department receives a request for an informal public hearing 21 days after service of the notice or order, the period for holding the informal public hearing is extended by the number of days after the 21st day that the request was received.

(6) A person who has been issued a notice or an order of cessation pursuant to subsection (1) or (2) or a person who has an interest that is or may be adversely affected by an order issued pursuant to subsection (1) or (2) or by modification, vacation, or termination of that order may request a hearing before the ~~board~~ department on that order within 30 days of its issuance or within 30 days of its modification, vacation, or termination. The filing of an application for review under this subsection may not operate as a stay of any order or notice. The ~~board~~ department shall make findings of fact and issue a written decision incorporating an order vacating, affirming, modifying, or terminating the order.

(7) Whenever an order is issued under this section or as the result of any administrative proceeding under this part, at the request of any person, a sum equal to the aggregate amount of all costs, expenses, and attorney fees as determined by the department to have been reasonably incurred by the person for or in connection with the person's participation in the proceedings, including any judicial review of agency actions, may be assessed against either party as the court, resulting from judicial review, or the department, resulting from administrative proceedings, considers proper.

(8) In order to protect the stability of the land, the director or an authorized representative shall order cessation of underground coal mining under urbanized areas, cities, towns, and communities and adjacent to

1 industrial or commercial buildings, major impoundments, or permanent streams if the director or the authorized
2 agent finds imminent danger to inhabitants of the urbanized areas, cities, towns, and communities."

3
4 **Section 187.** Section 82-4-254, MCA, is amended to read:

5 **"82-4-254. Violation -- penalty -- waiver.** (1) (a) Except as provided in subsection (2), a person or
6 operator who violates any of the provisions of this part, rules adopted or orders issued under this part, or term
7 or condition of a permit and any director, officer, or agent of a corporation who purposely or knowingly
8 authorizes, orders, or carries out a violation shall pay an administrative penalty of not less than \$100 or more
9 than \$5,000 for the violation and an additional administrative penalty of not less than \$100 or more than \$5,000
10 for each day during which a violation continues and may be enjoined from continuing the violations as provided
11 in this section. A person or operator who fails to correct a violation within the period permitted by law, rule ~~of the~~
12 ~~board~~, or order of the department must be assessed a penalty of not less than \$750 for each day, up to 30
13 days, during which the failure or violation continues.

14 (b) Penalties assessed under this section must be determined in accordance with the penalty factors
15 in 82-4-1001.

16 (c) The period permitted for correction of a violation does not, in the case of any review proceeding
17 under 82-4-251(6), end until entry of a final order suspending the abatement requirements or until entry of an
18 order of court ordering suspension of the abatement requirements. If the failure to abate continues for more
19 than 30 days, the department shall, within 30 days after the 30-day period, take appropriate action pursuant to
20 82-4-251(3) or request action under subsection (4) or (6) of this section.

21 (2) The department may waive the penalty for a minor violation of this part, a rule adopted or an order
22 issued under this part, or a term or condition of a permit if the department determines that the violation is not of
23 potential harm to public health, public safety, or the environment and does not impair the administration of this
24 part. The department may not waive a penalty assessed under this section if the person or operator fails to
25 abate the violation as directed under 82-4-251. The ~~board~~department shall adopt rules to implement and
26 administer a procedure for waiver of a penalty under this subsection.

27 (3) (a) To assess an administrative penalty under this section, the department shall issue a notice of
28 violation and penalty order to the person or operator, unless the penalty is waived pursuant to subsection (2).

1 The notice and order must specify the provision of this part, rule adopted or order issued under this part, or
2 term or condition of a permit that is violated and must contain findings of fact, conclusions of law, and a
3 statement of the proposed administrative penalty. The notice and order must be served personally or by
4 certified mail. Service by mail is complete 3 business days after the date of mailing. The notice and order
5 become final unless, within 30 days after the order is served, the person or operator to whom the order was
6 issued requests a hearing before the ~~board~~ department. By submitting to the ~~board~~ department a written
7 request within 30 days of service of the notice of violation, stating the reason for the request, the person or
8 operator is entitled to a hearing before the ~~board~~ department under 82-4-206 on the issues of whether the
9 alleged violation has occurred and whether the penalty proposed to be assessed is proper. On receipt of a
10 request, the ~~board~~ department shall schedule a hearing. After a hearing, the ~~board~~ department shall make
11 findings of fact and issue a written decision as to the occurrence of the violation and the amount of penalty
12 warranted. If the ~~board~~ department finds that the violation occurred and a penalty is warranted, it shall order the
13 payment of the penalty. If the time for requesting a hearing expires without a hearing request, the person or
14 operator shall remit the amount of the penalty within 30 days of the expiration of the period for requesting a
15 hearing.

16 (b) If the person or operator to whom a final order is issued under subsection (3)(a) wishes to obtain
17 judicial review of the order, the person or operator shall submit with any assessed penalty a statement that the
18 penalty is being paid under protest and the department shall hold the payment in escrow until judicial review is
19 complete. Any person or operator who fails to request and submit testimony at the hearing provided for in
20 subsection (3)(a) or who fails to pay any assessed penalty under protest within 30 days of the order assessing
21 the penalty forfeits the right to seek judicial review of the violation and penalty determinations.

22 (c) Penalties provided for in this section are recoverable in an action brought by the department. The
23 action must be filed in the district court of the first judicial district, Lewis and Clark County, if mutually agreed on
24 by the parties in the action, or in the district court having jurisdiction over the defendant.

25 (4) The department may bring an action for a restraining order or temporary or permanent injunction
26 against an operator or other person who:

27 (a) violates, threatens to violate, or fails or refuses to comply with any order or decision issued under
28 this part;

- 1 (b) interferes with, hinders, or delays the department in carrying out the provisions of this part;
2 (c) refuses to admit an authorized representative of the department to the permit area;
3 (d) refuses to permit inspection of the permit area by an authorized representative of the department;
4 (e) refuses to furnish any information or report requested by the department in furtherance of the
5 provisions of this part; or
6 (f) refuses to permit access to and copying of records that the department determines to be
7 necessary in carrying out the provisions of this part.

8 (5) Any relief granted by a court under subsection (4)(a) continues in effect until the completion or
9 final termination of all proceedings for review of relief granted under this part unless, prior to the final
10 determination, the district court granting the relief sets it aside or modifies it.

11 (6) A person who violates any of the provisions of this part or any determination or order issued under
12 this part or who purposely or knowingly violates any permit condition issued under this part is guilty of a
13 misdemeanor and shall be fined an amount not less than \$500 and not more than \$10,000 or be imprisoned for
14 not more than 1 year, or both. Each day on which the violation occurs constitutes a separate offense.

15 (7) A person who knowingly makes any false statement, representation, or certification or knowingly
16 fails to make any statement, representation, or certification in any application, record, report, plan, or other
17 document filed or required to be maintained pursuant to this part shall upon conviction be punished by a fine of
18 not more than \$10,000 or by imprisonment for not more than 1 year, or both.

19 (8) A person who except as permitted by law purposely or knowingly resists, prevents, impedes, or
20 interferes with the department or its agents in the performance of duties pursuant to this part shall be punished
21 by a fine of not more than \$5,000 or by imprisonment for not more than 1 year, or both.

22 (9) An employee of the department performing any function or duty under this part may not have a
23 direct or indirect financial interest in any strip- or underground-coal-mining operation. A person who knowingly
24 violates the provisions of this subsection shall upon conviction be punished by a fine of not more than \$2,500 or
25 by imprisonment of not more than 1 year, or both.

26 (10) Within 30 days after receipt of full payment of an administrative penalty assessed under this
27 section, the department shall issue a written release of civil liability for the violations for which the penalty was
28 assessed."

1

2 **Section 188.** Section 82-4-303, MCA, is amended to read:

3 **"82-4-303. Definitions.** As used in this part, unless the context indicates otherwise, the following
4 definitions apply:

5 (1) "Abandonment of surface or underground mining" may be presumed when it is shown that
6 continued operation will not resume.

7 (2) "Amendment" means a change to an approved operating or reclamation plan. A major amendment
8 is an amendment that may significantly affect the human environment. A minor amendment is an amendment
9 that will not significantly affect the human environment.

10 ~~(3) "Board" means the board of environmental review provided for in 2-15-3502.~~

11 ~~(4)~~ (3) "Certification" means, with regard to tailings storage facilities, a statement of opinion by a
12 professional engineer that the work on a tailings storage facility has been conducted in accordance with the
13 normal standard of care within dam engineering practice. Certification does not constitute a warranty or
14 guarantee of facts or conditions certified.

15 ~~(5)~~ (4) "Completeness" means that an application contains information addressing each applicable
16 permit requirement as listed in this part or rules adopted pursuant to this part in sufficient detail for the
17 department to make a decision as to adequacy of the application to meet the requirements of this part.

18 ~~(6)~~ (5) "Constructor" means the company or companies constructing the built components of a tailings
19 storage facility, including but not limited to embankment dams, surface water diversion structures, tailings
20 distribution systems, reclaim water systems, and monitoring instrumentation.

21 ~~(7)~~ (6) "Cyanide ore-processing reagent" means cyanide or a cyanide compound used as a reagent in
22 leaching operations.

23 ~~(8)~~ (7) "Department" means the department of environmental quality provided for in 2-15-3501.

24 ~~(9)~~ (8) "Disturbed land" means the area of land or surface water that has been disturbed, beginning at
25 the date of the issuance of the permit. The term includes the area from which the overburden, tailings, waste
26 materials, or minerals have been removed and tailings ponds, waste dumps, roads, conveyor systems, load-out
27 facilities, leach dumps, and all similar excavations or coverings that result from the operation and that have not
28 been previously reclaimed under the reclamation plan.

1 ~~(10)~~ (9) "Engineer of record" means a qualified engineer who is the lead designer for a tailings storage
2 facility.

3 ~~(11)~~ (10) "Expansion" means, with regard to tailings storage facilities, a change in the size, height, or
4 configuration of or a contiguous addition to an existing tailings storage facility that increases or may increase
5 the storage capacity of the impoundment above the currently permitted capacity.

6 ~~(12)~~ (11) "Exploration" means:

7 (a) all activities that are conducted on or beneath the surface of lands and that result in material
8 disturbance of the surface for the purpose of determining the presence, location, extent, depth, grade, and
9 economic viability of mineralization in those lands, if any, other than mining for production and economic
10 exploitation; and

11 (b) all roads made for the purpose of facilitating exploration, except as noted in 82-4-310.

12 ~~(13)~~ (12) "Independent review engineer" means a licensed engineer who is a recognized expert in
13 tailings storage facility design, construction, operation, and closure.

14 ~~(14)~~ (13) "Material deviation" means a failure to follow a condition in a design document, corrective
15 action plan, schedule, or tailings operation, maintenance, and surveillance manual that could reasonably be
16 expected to substantively impair a tailings storage facility from performing as intended.

17 ~~(15)~~ (14) "Maximum credible earthquake" means the most severe earthquake that can be expected at
18 a site based on geologic and seismological evidence, including a review of all historic earthquake data of
19 events sufficiently nearby to influence the site, all faults in the area, and attenuations from causative faults to
20 the site.

21 ~~(16)~~ (15) "Mineral" means any ore, rock, or substance, other than oil, gas, bentonite, clay, coal, sand,
22 gravel, peat, soil materials, or uranium, that is taken from below the surface or from the surface of the earth for
23 the purpose of milling, concentration, refinement, smelting, manufacturing, or other subsequent use or
24 processing or for stockpiling for future use, refinement, or smelting.

25 ~~(17)~~ (16) "Mining" commences when the operator first mines ores or minerals in commercial quantities
26 for sale, beneficiation, refining, or other processing or disposition or first takes bulk samples for metallurgical
27 testing in excess of the aggregate of 10,000 short tons.

28 ~~(18)~~ (17) "Observational method" means a continuous, managed, and integrated process of design,

1 construction control, monitoring, and review enabling appropriate, previously defined modifications to be
2 incorporated during and after construction.

3 ~~(19)~~ (18) "Operator" means a person who has an operating permit issued under 82-4-335.

4 ~~(20)~~ (19) "Ore processing" means milling, heap leaching, flotation, vat leaching, or other standard
5 hard-rock mineral concentration processes.

6 ~~(21)~~ (20) "Panel" means the tailings storage facility independent review panel created for each new or
7 expanded tailings storage facility.

8 ~~(22)~~ (21) "Person" means any person, corporation, firm, association, partnership, or other legal entity
9 engaged in exploration for or mining of minerals on or below the surface of the earth, reprocessing of tailings or
10 waste materials, or operation of a hard-rock mill.

11 ~~(23)~~ (22) "Placer deposit" means:

12 (a) naturally occurring, scattered, or unconsolidated valuable minerals in gravel, glacial, eolian,
13 colluvial, or alluvial deposits lying above bedrock; or

14 (b) all forms of deposit except veins of quartz and other rock in place.

15 ~~(24)~~ (23) "Placer or dredge mining" means the mining of minerals from a placer deposit by a person or
16 persons.

17 ~~(25)~~ (24) "Practicable" means available and capable of being implemented after taking into
18 consideration cost, existing technology, and logistics in light of overall project purposes.

19 ~~(26)~~ (25) "Professional engineer" means a registered professional engineer licensed to practice in
20 Montana under Title 37, chapter 67, part 3.

21 ~~(27)~~ (26) "Qualified engineer" means a professional engineer who has a minimum of 10 years of direct
22 experience with the design and construction of tailings storage facilities and has the appropriate professional
23 and educational credentials to effectively determine appropriate parameters for the safe design, construction,
24 operation, and closure of a tailings storage facility.

25 ~~(28)~~ (27) "Reclamation plan" means the operator's written proposal, as required and approved by the
26 department, for reclamation of the land that will be disturbed. The proposal must include, to the extent practical
27 at the time of application for an operating permit:

28 (a) a statement of the proposed subsequent use of the land after reclamation, which may include use

1 of the land as an industrial site not necessarily related to mining;

2 (b) plans for surface gradient restoration to a surface suitable for the proposed subsequent use of the
3 land after reclamation is completed and the proposed method of accomplishment;

4 (c) the manner and type of revegetation or other surface treatment of disturbed areas;

5 (d) procedures proposed to avoid foreseeable situations of public nuisance, endangerment of public
6 safety, damage to human life or property, or unnecessary damage to flora and fauna in or adjacent to the area;

7 (e) the method of disposal of mining debris;

8 (f) the method of diverting surface waters around the disturbed areas when necessary to prevent
9 pollution of those waters or unnecessary erosion;

10 (g) the method of reclamation of stream channels and stream banks to control erosion, siltation, and
11 pollution;

12 (h) maps and other supporting documents that may be reasonably required by the department; and

13 (i) a time schedule for reclamation that meets the requirements of 82-4-336.

14 ~~(29)~~ (28) "Rock products" means decorative rock, building stone, riprap, mineral aggregates, and other
15 minerals produced by typical quarrying activities or collected from or just below the ground surface.

16 ~~(30)~~ (29) (a) "Small miner" means a person, firm, or corporation that engages in mining activity that is
17 not exempt from this part pursuant to 82-4-310, that engages in the business of reprocessing of tailings or
18 waste materials, that, except as provided in 82-4-310, knowingly allows other persons to engage in mining
19 activities on land owned or controlled by the person, firm, or corporation, that does not hold an operating permit
20 under 82-4-335 except for a permit issued under 82-4-335(3) or a permit that meets the criteria of subsection
21 ~~(30)~~ (29) ~~(c)~~ of this section, and that conducts:

22 (i) an operation that results in not more than 5 acres of the earth's surface being disturbed and
23 unreclaimed; or

24 (ii) two operations that disturb and leave unreclaimed less than 5 acres for each operation if the
25 respective mining properties are:

26 (A) the only operations engaged in by the person, firm, or corporation; and

27 (B) at least 1 mile apart at their closest point.

28 (b) For the purpose of this definition only, the department shall, in computing the area covered by the

1 operation:

2 (i) exclude access or haulage roads that are required by a local, state, or federal agency having
3 jurisdiction over that road to be constructed to certain specifications if that public agency notifies the department
4 in writing that it desires to have the road remain in use and will maintain it after mining ceases; and

5 (ii) exclude access roads for which the person, firm, or corporation submits a bond to the department in
6 the amount of the estimated total cost of reclamation along with a description of the location of the road and the
7 specifications to which it will be constructed.

8 (c) A small miner may hold an operating permit that allows disturbance of 100 acres or less. The
9 permit may be amended to add new disturbance areas, but the total area permitted for disturbance may not
10 exceed 100 acres at any time.

11 ~~(31)~~ (30) "Soil materials" means earth material found in the upper soil layers that will support plant
12 growth.

13 ~~(32)~~ (31) (a) "Surface mining" means all or any part of the process involved in mining of minerals by
14 removing the overburden and mining directly from the mineral deposits exposed, including but not limited to
15 open-pit mining of minerals naturally exposed at the surface of the earth, mining by the auger method, and all
16 similar methods by which earth or minerals exposed at the surface are removed in the course of mining.

17 (b) Surface mining does not include the extraction of oil, gas, bentonite, clay, coal, sand, gravel, peat,
18 soil materials, or uranium or excavation or grading conducted for onsite farming, onsite road construction, or
19 other onsite building construction.

20 ~~(33)~~ (32) "Tailings" means the residual materials remaining after a milling process that separates the
21 valuable fraction from the uneconomic fraction of an ore mined by an operator.

22 ~~(34)~~ (33) (a) "Tailings storage facility" means a facility that temporarily or permanently stores tailings,
23 including the impoundment, embankment, tailings distribution works, reclaim water works, monitoring devices,
24 storm water diversions, and other ancillary structures.

25 (b) The term does not include a facility that:

26 (i) stores 50 acre-feet or less of free water or process solution;

27 (ii) is wholly contained below surrounding grade with no man-made structures retaining tailings, water,
28 or process solution or underground mines that use tailings as backfill; or

(iii) stores dry stack or filtered tailings.

~~(35)~~ (34) "Underground mining" means all methods of mining other than surface mining.

~~(36)~~ (35) "Unit of surface-mined area" means that area of land and surface water included within an operating permit actually disturbed by surface mining during each 12-month period of time, beginning at the date of the issuance of the permit. The term includes the area from which overburden or minerals have been removed, the area covered by mining debris, and all additional areas used in surface mining or underground mining operations that by virtue of mining use are susceptible to erosion in excess of the surrounding undisturbed portions of land.

~~(37)~~ (36) "Vegetative cover" means the type of vegetation, grass, shrubs, trees, or any other form of natural cover considered suitable at time of reclamation."

Section 189. Section 82-4-304, MCA, is amended to read:

"82-4-304. Exemption -- works performed prior to promulgation of rules. This part is not applicable to any exploration or mining work performed prior to the date of promulgation of the ~~board's initial~~ rules pursuant to 82-4-321 relating to exploration and mining. This part is not applicable to the reprocessing of tailings or waste rock that occurred prior to the date of promulgation of the ~~board's initial~~ rules regarding those activities. If, after the date of promulgation of initial rules applicable to mills not located at a mine site, work is performed at a mill that does not use cyanide ore-processing reagent and that was constructed and operated before promulgation of those rules, this part applies only to the areas initially disturbed after promulgation of those rules."

Section 190. Section 82-4-305, MCA, is amended to read:

"82-4-305. Exemption -- small miners -- written agreement. (1) Except as provided in subsections (3) through (11), the provisions of this part do not apply to a small miner if the small miner annually agrees in writing:

(a) that the small miner will not pollute or contaminate any stream;

(b) that the small miner will provide protection for human and animal life through the installation of bulkheads installed over safety collars and the installation of doors on tunnel portals;

1 (c) that the small miner will provide a map locating the miner's mining operations. The map must be of
2 a size and scale determined by the department.

3 (d) if the small miner's operations are placer or dredge mining, that the small miner shall salvage and
4 protect all soil materials for use in reclamation of that site and shall reclaim all land disturbed by the operations
5 to comparable utility and stability as that of adjacent areas.

6 (2) For small-miner exemptions obtained after September 30, 1985, a small miner may not obtain or
7 continue an exemption under subsection (1) unless the small miner annually certifies in writing:

8 (a) if the small miner is an individual, that:

9 (i) no business association or partnership of which the small miner is a member or partner has a
10 small-miner exemption; and

11 (ii) no corporation of which the small miner is an officer, director, or owner of record of 25% or more of
12 any class of voting stock has a small-miner exemption; or

13 (b) if the small miner is a partnership or business association, that:

14 (i) none of the associates or partners holds a small-miner exemption; and

15 (ii) none of the associates or partners is an officer, director, or owner of 25% or more of any class of
16 voting stock of a corporation that has a small-miner exemption; or

17 (c) if the small miner is a corporation, that no officer, director, or owner of record of 25% or more of
18 any class of voting stock of the corporation:

19 (i) holds a small-miner exemption;

20 (ii) is a member or partner in a business association or partnership that holds a small-miner exemption;

21 (iii) is an officer, director, or owner of record of 25% or more of any class of voting stock of another
22 corporation that holds a small-miner exemption.

23 (3) A small miner whose operations are placer or dredge mining shall post a performance bond equal
24 to the state's documented cost estimate of reclaiming the disturbed land, although the bond may not exceed
25 \$10,000 for each operation. If the small miner has posted a bond for reclamation with another government
26 agency, the small miner is exempt from the requirement of this subsection.

27 (4) If a small miner who conducts a placer or dredge mining operation fails to reclaim the operation,
28 the small miner is liable to the department for all its reasonable costs of reclamation, including a reasonable

1 charge for services performed by state personnel and for state materials and equipment used. If the small
2 miner posts a surety bond, the surety is liable to the state to the extent of the bond amount and the small miner
3 is liable for the remainder of the reasonable costs to the state of reclaiming the operation.

4 (5) If a small miner who conducts a placer or dredge mining operation fails to commence reclamation
5 of the operation within 6 months after cessation of mining or within an extended period allowed by the
6 department for good cause shown or if the small miner fails to diligently complete reclamation, the department
7 shall notify the small miner by certified mail that it intends to reclaim the operation unless the small miner
8 commences reclamation within 30 days and diligently completes the reclamation. The notice must be mailed to
9 the address stated on the small miner exclusion statement or, if the small miner has notified the department of
10 a different address by letter or in the annual certification form, to the most recent address given to the
11 department. If the small miner fails to commence reclamation within 30 days or to diligently complete
12 reclamation, the department may revoke the small miner exclusion statement, forfeit any bond that has been
13 posted with the department, and enter and reclaim the operation. If the small miner has not posted a bond with
14 the department or if the reasonable costs of reclamation exceed the amount of the bond, the department may
15 also collect additional reclamation costs, as set forth in subsection (6), before or after it incurs those costs.

16 (6) To collect additional reclamation costs, the department shall notify the small miner by certified
17 mail, at the address determined under subsection (5), of the additional reasonable reclamation costs and
18 request payment within 30 days. If the small miner does not pay the additional reclamation costs within 30
19 days, the department may bring an action in district court for payment of the estimated future costs and, if the
20 department has performed any reclamation, of its reasonable actual costs. The court shall order payment of
21 costs that it determines to be reasonable and shall retain jurisdiction until reclamation of the operation is
22 completed. Upon completion of reclamation, the court shall order payment of any additional costs that it
23 considers reasonable or the refund of any portion of any payment for estimated costs that exceeds the actual
24 reasonable costs incurred by the department.

25 (7) A small miner who intends to use a cyanide ore-processing reagent or other metal leaching
26 solvents or reagents shall obtain an operating permit for that part of the small miner's operation in which the
27 cyanide ore-processing reagent or other metal leaching solvents or reagents will be used or disposed of. The
28 acreage disturbed by the operation using cyanide ore-processing reagents or other metal leaching solvents or

1 reagents and covered by the operating permit is excluded from the 5-acre limit specified in ~~82-4-303(30)(a)(i)~~
2 ~~and (30)(a)(ii)~~ 82-4-303(29)(a)(i) and (29)(a)(ii).

3 (8) (a) Except for a small miner proposing to conduct a placer or dredge mining operation, a small
4 miner who intends to use an impoundment to store waste from ore processing shall obtain approval for the
5 design, construction, operation, and reclamation of that impoundment and post a performance bond for that
6 part of the small miner's operation before constructing an impoundment. The small miner shall post a
7 performance bond equal to the state's documented cost estimate of reclaiming the disturbed land. If the small
8 miner has posted a bond for reclamation of that site with a federal government agency, the small miner is
9 exempt from the requirements of this subsection (8)(a).

10 (b) The department shall conduct a review of the adequacy of the bond posted by a small miner using
11 an impoundment pursuant to this section at least once every 5 years and adjust the bond if necessary to ensure
12 reclamation of the impoundment. The acreage disturbed by the portion of the operation that uses an
13 impoundment to store waste from ore processing is included in the 5-acre limit specified in ~~82-4-303(30)(a)(i)~~
14 ~~and (30)(a)(ii)~~ 82-4-303(29)(a)(i) and (29)(a)(ii) and is subject to the provisions of this subsection (8).

15 (c) If a small miner under this subsection (8) fails to reclaim the operation, the small miner is liable to
16 the department for all its reasonable costs of reclamation, including a reasonable charge for services performed
17 by state personnel and for state materials and equipment used. If the small miner posts a surety bond, the
18 surety is liable to the state to the extent of the bond amount and the small miner is liable for the remainder of
19 the reasonable costs to the state of reclaiming the operation.

20 (d) If a small miner under this subsection (8) fails to commence reclamation of the operation within 6
21 months after cessation of mining or within an extended period allowed by the department for good cause shown
22 or if the small miner fails to diligently complete reclamation, the department shall notify the small miner by
23 certified mail that it intends to reclaim the operation unless the small miner commences reclamation within 30
24 days and diligently completes the reclamation. The notice must be mailed to the address stated on the small
25 miner exclusion statement or, if the small miner has notified the department of a different address by letter or in
26 the annual certification form, to the most recent address given to the department. If the small miner fails to
27 commence reclamation within 30 days or to diligently complete reclamation, the department may revoke the
28 small miner exclusion statement, forfeit any bond that has been posted with the department, and enter and

1 reclaim the operation. If the small miner has not posted a bond with the department or if the reasonable costs of
2 reclamation exceed the amount of the bond, the department may also collect additional reclamation costs, as
3 set forth in subsection (8)(e), before or after it incurs those costs.

4 (e) To collect additional reclamation costs, the department shall notify the small miner by certified
5 mail, at the address determined under subsection (8)(d), of the additional reasonable reclamation costs and
6 request payment within 30 days. If the small miner does not pay the additional reclamation costs within 30
7 days, the department may bring an action in district court for payment of the estimated future costs and, if the
8 department has performed any reclamation, of its reasonable actual costs. The court shall order payment of
9 costs that it determines to be reasonable and shall retain jurisdiction until reclamation of the operation is
10 completed. Upon completion of reclamation, the court shall order payment of any additional costs that it
11 considers reasonable or the refund of any portion of any payment for estimated costs that exceeds the actual
12 reasonable costs incurred by the department.

13 (f) Except for a small miner who conducts a placer or dredge mining operation, a small miner utilizing
14 an impoundment to store waste from ore processing on or after April 28, 2005, shall obtain approval of the
15 design, construction, operation, and reclamation of that impoundment and post a performance bond within 6
16 months of April 28, 2005. If the small miner has posted a bond for reclamation of that site with a federal
17 government agency, the small miner is exempt from the requirements of this subsection (8)(f).

18 (9) The exemption provided in this section does not apply to a person:

19 (a) whose failure to comply with the provisions of this part, the rules adopted under this part, or a
20 permit or license issued under this part has resulted in the forfeiture of a bond, unless that person meets the
21 conditions described under 82-4-360;

22 (b) who has not paid a penalty for which the department has obtained a judgment pursuant to 82-4-
23 361;

24 (c) who has failed to post a reclamation bond required by this section, unless the department has
25 certified that the area for which the bond should have been posted has been reclaimed by that person or
26 reclaimed by the department and the person has reimbursed the department for the cost of the reclamation; or

27 (d) who has failed to comply with an abatement order issued pursuant to 82-4-362, unless the
28 department has completed the abatement and the person has reimbursed the department for the cost of

1 abatement.

2 (10) The exemption provided in this section does not apply to an area:

3 (a) under permit pursuant to 82-4-335;

4 (b) that has been permitted pursuant to 82-4-335 and reclaimed by the permittee, the department, or
5 any other state or federal agency; or

6 (c) that has been reclaimed by or has been subject to remediation of contamination or pollution by a
7 public agency, under supervision of a public agency, or using public funds.

8 (11) A small miner may not use mercury except in a contained facility that prevents the escape of any
9 mercury into the environment."
10

11 **Section 191.** Section 82-4-309, MCA, is amended to read:

12 **"82-4-309. Exemption -- operations on federal lands.** This part ~~shall not be applicable~~ does not
13 apply to operations on certain federal lands as specified by the ~~board~~ department, provided it is first determined
14 by the ~~board~~ department that federal law or regulations issued by the federal agency administering such land
15 impose controls for reclamation of said lands substantially equal to or greater than those imposed by this part."
16

17 **Section 192.** Section 82-4-321, MCA, is amended to read:

18 **"82-4-321. Administration.** The department is charged with the responsibility of administering this
19 part. ~~In order to implement its terms and provisions, the board shall from time to time promulgate such and~~
20 adopting rules as the ~~board shall deem~~ necessary. The department shall employ experienced, qualified persons
21 in the field of mined-land reclamation who, for the purpose of this part, are referred to as supervisors."
22

23 **Section 193.** Section 82-4-332, MCA, is amended to read:

24 **"82-4-332. Exploration license.** (1) An exploration license must be issued to any applicant who:

25 (a) pays a fee of \$100 to the department;

26 (b) agrees to reclaim any surface area damaged by the applicant during exploration operations, as
27 may be reasonably required by the department;

28 (c) is not in default of any other reclamation obligation under this law.

(2) An application for an exploration license must be made in writing, notarized, and submitted to the department in duplicate upon forms prepared and furnished by it. The application must include an exploration map or sketch in sufficient detail to locate the area to be explored and to determine whether significant environmental problems would be encountered. The ~~board~~ department shall by rule determine the precise nature of the exploration map or sketch. The applicant shall state what type of prospecting and excavation techniques will be employed in disturbing the land.

(3) Prior to the issuance of an exploration license, the applicant shall file with the department a reclamation and revegetation bond in a form and amount as determined by the department in accordance with 82-4-338.

(4) In the event that the holder of an exploration license desires to mine the area covered by the exploration license and has fulfilled all of the requirements for an operating permit, the department shall allow the postponement of the reclamation of the acreage explored if that acreage is incorporated into the complete reclamation plan submitted with the application for an operating permit. Any land actually affected by exploration or excavation under an exploration license and not covered by the operating reclamation plan must be reclaimed within 2 years after the completion of exploration or abandonment of the site in a manner acceptable to the department."

Section 194. Section 82-4-335, MCA, is amended to read:

"82-4-335. Operating permit -- limitation -- fees. (1) A person may not engage in mining, ore processing, or reprocessing of tailings or waste material, construct or operate a hard-rock mill, use cyanide ore-processing reagents or other metal leaching solvents or reagents, or disturb land in anticipation of those activities in the state without first obtaining a final operating permit from the department. Except as provided in subsection (2), a separate final operating permit is required for each complex.

(2) (a) A person who engages in the mining of rock products or a landowner who allows another person to engage in the mining of rock products from the landowner's land may obtain an operating permit for multiple sites if each of the multiple sites does not:

(i) operate within 100 feet of surface water or in ground water or impact any wetland, surface water, or ground water;

- 1 (ii) have any water impounding structures other than for storm water control;
2 (iii) have the potential to produce acid, toxic, or otherwise pollutive solutions;
3 (iv) adversely impact a member of or the critical habitat of a member of a wildlife species that is listed
4 as threatened or endangered under the Endangered Species Act of 1973; or
5 (v) impact significant historic or archaeological features.

6 (b) A landowner who is a permittee and who allows another person to mine on the landowner's land
7 remains responsible for compliance with this part, the rules adopted pursuant to this part, and the permit for all
8 mining activities conducted on sites permitted pursuant to this subsection (2) with the landowner's permission.
9 The performance bond required under this part is and must be conditioned upon compliance with this part, the
10 rules adopted pursuant to this part, and the permit of the landowner and any person who mines with the
11 landowner's consent.

12 (3) A small miner who intends to use a cyanide ore-processing reagent or other metal leaching
13 solvents or reagents shall obtain an operating permit for that part of the small miner's operation where the
14 cyanide ore-processing reagent or other metal leaching solvents or reagents will be used or disposed of.

15 (4) (a) Prior to receiving an operating permit from the department, a person shall pay the basic permit
16 fee of \$500. The department may require a person who is applying for a permit pursuant to subsection (1) to
17 pay an additional fee not to exceed the actual amount of contractor and employee expenses beyond the normal
18 operating expenses of the department whenever those expenses are reasonably necessary to provide for
19 timely and adequate review of the application, including any environmental review conducted under Title 75,
20 chapter 1, parts 1 and 2. The ~~board~~ department may further define these expenses by rule. Whenever the
21 department determines that an additional fee is necessary and the additional fee will exceed \$5,000, the
22 department shall notify the applicant that a fee must be paid and submit to the applicant an itemized estimate of
23 the proposed expenses. The department shall provide the applicant an opportunity to review the department's
24 estimated expenses. The applicant may indicate which proposed expenses the applicant considers duplicative
25 or excessive, if any.

26 (b) (i) Subject to subsection (4)(b)(ii), a contractor shall, at the request of the applicant, directly
27 submit invoices of contractor expenses to the applicant.

28 (ii) A contractor's work is assigned, reviewed, accepted, or rejected by the department pursuant to this

1 section.

2 (5) The person shall submit an application on a form provided by the department, which must contain
3 the following information and any other pertinent data required by rule:

4 (a) the name and address of the operator, the engineer of record if applicable, and, if a corporation or
5 other business entity, the name and address of its officers, directors, owners of 10% or more of any class of
6 voting stock, partners, and the like and its resident agent for service of process, if required by law;

7 (b) the minerals expected to be mined;

8 (c) a proposed reclamation plan;

9 (d) the expected starting date of operations;

10 (e) a map showing the specific area to be mined and the boundaries of the land that will be disturbed,
11 the topographic detail, the location and names of all streams, roads, railroads, and utility lines on or
12 immediately adjacent to the area, and the location of proposed access roads to be built;

13 (f) the names and addresses of the owners of record and any purchasers under contracts for deed of
14 the surface of the land within the permit area and the owners of record and any purchasers under contracts for
15 deed of all surface area within one-half mile of any part of the permit area, provided that the department is not
16 required to verify this information;

17 (g) the names and addresses of the present owners of record and any purchasers under contracts for
18 deed of all minerals in the land within the permit area, provided that the department is not required to verify this
19 information;

20 (h) the source of the applicant's legal right to mine the mineral on the land affected by the permit,
21 provided that the department is not required to verify this information;

22 (i) the types of access roads to be built and manner of reclamation of road sites on abandonment;

23 (j) a plan that will provide, within limits of normal operating procedures of the industry, for completion
24 of the operation;

25 (k) ground water and surface water hydrologic data gathered from a sufficient number of sources and
26 length of time to characterize the hydrologic regime;

27 (l) a plan detailing the design, operation, and monitoring of impounding structures, including but not
28 limited to tailings impoundments and water reservoirs, sufficient to ensure that the structures are safe and

1 stable. For a tailings storage facility, this requirement is met by submission of a design document pursuant to
2 82-4-376, a panel report pursuant to 82-4-377, and a tailings operation, maintenance, and surveillance manual
3 pursuant to 82-4-379 prior to issuance of a draft permit.

4 (m) a plan identifying methods to be used to monitor for the accidental discharge of objectionable
5 materials and remedial action plans to be used to control and mitigate discharges to surface or ground water;

6 (n) an evaluation of the expected life of any tailings impoundment or waste area and the potential for
7 expansion of the tailings impoundment or waste site. For a tailings storage facility, this requirement is met by
8 submission of a design document pursuant to 82-4-376, a panel report pursuant to 82-4-377, and a tailings
9 operation, maintenance, and surveillance manual pursuant to 82-4-379 prior to issuance of a draft permit.

10 (o) an assessment of the potential for the postmining use of mine-related facilities for other industrial
11 purposes, including evidence of consultation with the county commission of the county or counties where the
12 mine or mine-related facilities will be located.

13 (6) Except as provided in subsection (8), the permit provided for in subsection (1) for a large-scale
14 mineral development, as defined in 90-6-302, must be conditioned to provide that activities under the permit
15 may not commence until the impact plan is approved under 90-6-307 and until the permittee has provided a
16 written guarantee to the department and to the hard-rock mining impact board of compliance within the time
17 schedule with the commitment made in the approved impact plan, as provided in 90-6-307. If the permittee
18 does not comply with that commitment within the time scheduled, the department, upon receipt of written notice
19 from the hard-rock mining impact board, shall suspend the permit until it receives written notice from the hard-
20 rock mining impact board that the permittee is in compliance.

21 (7) When the department determines that a permittee has become or will become a large-scale
22 mineral developer pursuant to 82-4-339 and 90-6-302 and provides notice as required under 82-4-339, within 6
23 months of receiving the notice, the permittee shall provide the department with proof that the permittee has
24 obtained a waiver of the impact plan requirement from the hard-rock mining impact board or that the permittee
25 has filed an impact plan with the hard-rock mining impact board and the appropriate county or counties. If the
26 permittee does not file the required proof or if the hard-rock mining impact board certifies to the department that
27 the permittee has failed to comply with the hard-rock mining impact review and implementation requirements in
28 Title 90, chapter 6, parts 3 and 4, the department shall suspend the permit until the permittee files the required

1 proof or until the hard-rock mining impact board certifies that the permittee has complied with the hard-rock
2 mining impact review and implementation requirements.

3 (8) Compliance with 90-6-307 is not required for exploration and bulk sampling for metallurgical
4 testing when the aggregate samples are less than 10,000 tons.

5 (9) A person may not be issued an operating permit if:

6 (a) that person's failure, or the failure of any firm or business association of which that person was a
7 principal or controlling member, to comply with the provisions of this part, the rules adopted under this part, or a
8 permit or license issued under this part has resulted in either the receipt of bond proceeds by the department or
9 the completion of reclamation by the person's surety or by the department, unless that person meets the
10 conditions described in 82-4-360;

11 (b) that person has not paid a penalty for which the department has obtained a judgment pursuant to
12 82-4-361;

13 (c) that person has failed to post a reclamation bond required by 82-4-305; or

14 (d) that person has failed to comply with an abatement order issued pursuant to 82-4-362, unless the
15 department has completed the abatement and the person has reimbursed the department for the cost of
16 abatement.

17 (10) A person may not be issued a permit under this part unless, at the time of submission of a bond,
18 the person provides the current information required in subsection (5)(a) and:

19 (a) (i) certifies that the person is not currently in violation in this state of any law, rule, or regulation of
20 this state or of the United States pertaining to air quality, water quality, or mined land reclamation; or

21 (ii) presents a certification by the administering agency that the violation is in the process of being
22 corrected to the agency's satisfaction or is the subject of a bona fide administrative or judicial appeal; and

23 (b) if the person is a partnership, corporation, or other business association, provides the certification
24 required by subsection (10)(a)(i) or (10)(a)(ii), as applicable, for any partners, officers, directors, owners of 10%
25 or more of any class of voting stock, and business association members."
26

27 **Section 195.** Section 82-4-338, MCA, is amended to read:

28 **"82-4-338. Performance bond.** (1) (a) An applicant for an exploration license or operating permit

1 shall file with the department a bond payable to the state of Montana with surety satisfactory to the department
2 in the sum to be determined by the department of not less than \$200 for each acre or fraction of an acre of the
3 disturbed land, conditioned upon the faithful performance of the requirements of this part, the rules of the ~~board~~
4 department, and the permit. In lieu of a bond, the applicant may file with the department a cash deposit, an
5 assignment of a certificate of deposit, an irrevocable letter of credit, or other surety acceptable to the
6 department. The bond may not be less than the estimated cost to the state to ensure compliance with Title 75,
7 chapters 2 and 5, this part, the rules, and the permit, including the potential cost of department management,
8 operation, and maintenance of the site upon temporary or permanent operator insolvency or abandonment,
9 [during a suspension authorized pursuant to 82-4-341(8)(b)(ii) or] until full bond liquidation can be effected.

10 (b) A public or governmental agency may not be required to post a bond under the provisions of this
11 part.

12 (c) A blanket performance bond covering two or more operations may be accepted by the
13 department. A blanket bond must adequately secure the estimated total number of acres of disturbed land.

14 (d) (i) For an exploration license or operating permit authorizing activities on federal land within the
15 state, the department may accept a bond payable to the state of Montana and the federal agency administering
16 the land. The bond must provide at least the same amount of financial guarantee as required by this part.

17 (ii) The bond must provide that the department may forfeit the bond without the concurrence of the
18 federal land management agency. The bond may provide that the federal land management agency may forfeit
19 the bond without the concurrence of the department. Upon forfeiture by either agency, the bond must be
20 payable to the department and may also be payable to the federal land management agency. If the bond is
21 payable to the department and the federal land management agency, the department, before accepting the
22 bond, shall enter into an agreement or memorandum of understanding with the federal land management
23 agency providing for administration of the bond funds in a manner that will allow the department to provide for
24 compliance with the requirements of this part, the rules adopted under this part, and the permit.

25 (iii) The department may not enter into an agreement or memorandum of understanding with a federal
26 land management agency that would require the department to impose requirements on an operator that are
27 more stringent than state law and rules.

28 (2) (a) The department may calculate one or more reclamation plan components within its jurisdiction

1 with the assistance of one or more third-party contractors selected jointly by the department and the applicant
2 and compensated by the applicant when, based on relevant past experience, the department determines that
3 additional expertise is necessary to calculate the bond amount for reclamation plan components. The
4 department may contract for assistance pursuant to this subsection in determining bond amounts for the initial
5 bond and for any subsequent bond review and adjustment. The mine owner is responsible for the first \$5,000 in
6 contractor services provided under this subsection. The mine owner and the department are each responsible
7 for 50% of any amount over \$5,000.

8 (b) To select a third-party contractor as authorized in subsection (2)(a), the department shall prepare
9 a list of no fewer than four contractors acceptable to the department and shall provide the applicant with a copy
10 of the list. The applicant shall provide the department with a list of at least 50% of the contractors from the
11 department's list. The department shall select its contractor from the list provided by the applicant.

12 (3) (a) The department shall conduct an overview of the amount of each bond annually and shall
13 conduct a comprehensive bond review at least every 5 years. The department may conduct additional
14 comprehensive bond reviews if, after modification of a reclamation or operation plan, an annual overview, or an
15 inspection of the permit area, the department determines that an increase of the bond level may be necessary.
16 The department shall consult with the licensee or permittee if a review indicates that the bond level should be
17 adjusted. When determined by the department that the set bonding level of a permit or license does not
18 represent the present costs of compliance with this part, the rules, and the permit, the department shall modify
19 the bonding requirements of that permit or license. The licensee or permittee must have 60 days to negotiate
20 the preliminary bond determination with the department, at the end of which time period the department shall
21 issue the proposed bond determination. The department shall give the licensee or permittee a copy of the bond
22 calculations that form the basis for the proposed bond determination and, for operating permits, publish notice
23 of the proposed bond determination in a newspaper of general circulation in the county in which the operation is
24 located. The department shall issue a final bond determination in 30 days. Unless the licensee or permittee
25 requests a hearing under subsection (3)(b), the licensee or permittee shall post bond with the department in the
26 amount represented by the final bond determination no later than 30 days after issuance of the final bond
27 determination. If the licensee or permittee demonstrates that, through the exercise of reasonable diligence, the
28 licensee or permittee will not be able to post the bond within 30 days, the department shall grant a 30-day

1 extension of the deadline.

2 (b) The permittee or any person with an interest that may be adversely affected may obtain a
3 contested case hearing before the ~~board~~ department under the provisions of the Montana Administrative
4 Procedure Act, Title 2, chapter 4, part 6, on the final bond determination by filing with the department, within 30
5 days of the issuance of the final bond determination, a written request for hearing stating the reason for the
6 request. The request for hearing must specify the amount of bond increase, if any, that the licensee or
7 permittee considers appropriate and state the reasons that the licensee or permittee considers the department's
8 final bond determination to be excessive. As a condition precedent to any right to request a hearing, the
9 licensee or permittee shall post bond with the department in the amount of the bond increase that the licensee
10 or permittee has stated is appropriate in the request for hearing or the amount that is one-half of the increase
11 contained in the department's final bond determination, whichever amount is greater. If the ~~board~~ department
12 determines that additional bond is necessary, the licensee or permittee shall post bond in the amount
13 determined by the ~~board~~ department within 30 days of receipt of the ~~board's~~ decision. If the licensee or
14 permittee demonstrates that, through the exercise of reasonable diligence, the licensee or permittee will not be
15 able to post the bond within 30 days, the department shall grant a reasonable extension of the deadline.

16 (c) If a licensee or permittee fails to post bond in accordance with subsection (3)(a) or (3)(b) in the
17 required amounts by the required deadlines, the license or permit is suspended by operation of law and the
18 licensee or permittee shall immediately cease mining and exploration operations until the required bond is
19 posted with and approved by the department.

20 (4) A bond filed in accordance with the provisions of this part may not be released by the department
21 until the provisions of this part, the rules adopted pursuant to this part, and the permit have been fulfilled.

22 (5) A bond filed for an operating permit obtained under 82-4-335 may not be released or decreased
23 until the public has been provided an opportunity for a hearing and a hearing has been held if requested. The
24 department shall provide reasonable statewide and local notice of the opportunity for a hearing, including but
25 not limited to publishing the notice in newspapers of general daily circulation.

26 (6) Except as provided in subsection (7), all bonds required in accordance with the provisions of this
27 section must be based upon reasonably foreseeable activities that the applicant may conduct in order to comply
28 with conditions of an operating permit or license. Bonds may be required only for anticipated activities as

described in subsection (1). Only those activities that themselves or in conjunction with other activities have a reasonable possibility of occurring may be bonded. Bond calculations, including calculations for the initial bond or for subsequent bond reviews and adjustments, may not include amounts for any occurrence or contingency that is not a reasonably foreseeable result of any activity conducted by the applicant.

(7) (a) If the department determines, based on unanticipated circumstances that are discovered following the issuance of a mining permit, that a substantial and imminent danger to public health, public safety, or the environment exists or that there is a reasonable probability that a violation of water quality standards will occur, the department may require an operator to submit an amended reclamation plan to address the danger and to post a temporary bond to guarantee the performance of the amended portion of the reclamation plan. The temporary bond may only be required if the anticipated costs associated with the plan amendment would increase the total bond amount for the current plan by more than 10%, as determined in subsection (7)(b).

(b) (i) In determining the need for the temporary bond and the amount of the temporary bond under subsection (7)(a), the department shall select a third-party contractor in consultation with the operator pursuant to subsection (7)(b)(ii) to provide:

(A) a technical engineering analysis and report on the substantial and imminent danger to public health, public safety, or the environment identified in subsection (7)(a); and

(B) the estimated costs of addressing the potential danger in order to establish the amount of the temporary bond.

(ii) The department shall provide the operator with a list of at least four qualified third-party contractors. The operator shall select two qualified third-party contractors from that list. The department shall select its contractor from the list provided by the operator. The operator shall reimburse the department for the reasonable costs of the third-party contractor.

(c) An approved interim amended reclamation plan and interim bond must remain in effect until the earlier of:

(i) the date that a revised reclamation plan is approved pursuant to 82-4-337 and a permanent bond for the revised reclamation plan is submitted and accepted pursuant to this section; or

(ii) 2 years following the date of submission of a complete application pursuant to 82-4-337 to modify the reclamation plan provision or remedy the conditions that created the need to amend the reclamation plan

1 unless the department approves or denies the complete application within 2 years of submission. The applicant
2 may agree to an extension of this deadline.

3 (d) Except as provided in subsection (8), the process provided for in this subsection (7) is not subject
4 to the provisions of Title 75, chapter 1.

5 (8) (a) In determining whether to require amendment of a reclamation plan under subsection (7)(a),
6 the department shall prepare or require the permittee to prepare a written analysis of changes in the
7 reclamation plan that may eliminate or mitigate to an acceptable level the environmental condition. The analysis
8 must include an assessment of the effectiveness of the changes and any potential negative environmental
9 impacts of the changes. The department shall prepare an environmental impact statement pursuant to Title 75,
10 chapter 1, only if the department determines that the changes would not mitigate the condition to an acceptable
11 level or may have potentially significant negative environmental impacts.

12 (b) If the department determines that preparation of an environmental impact statement is necessary,
13 the permittee shall pay the department's costs pursuant to 75-1-205.

14 (9) At the applicant's discretion, bonding in addition to that required by this section may be posted.
15 These unobligated bonds may, on the applicant's request, be applied to future bonds required by this section.

16 (10) (a) If the department determines that there exists at an area permitted or licensed under this part
17 an imminent danger to public health, public safety, or the environment caused by a violation of this part, the
18 rules adopted pursuant to this part, or the permit or license and if the permittee or licensee fails or refuses to
19 expeditiously abate the danger, the department may immediately suspend the permit or license, enter the site,
20 and abate the danger. The department may thereafter institute proceedings to revoke the license or permit,
21 declare the permittee or licensee in default, and forfeit a portion of the bond, not to exceed \$150,000 or 10% of
22 the bond, whichever is less, to be used to abate the danger. The department shall notify the surety of the
23 forfeiture and the forfeiture amount by certified mail, and the surety shall pay the forfeiture amount to the
24 department within 30 days of receipt of the notice. The department shall, as a condition of any termination of
25 the suspension and revocation proceedings, require that the permittee or licensee reimburse the surety, with
26 interest, for any amount paid to and expended by the department pursuant to this subsection (10) and for the
27 actual cost of the surety's expenses in responding to the department's forfeiture demand.

28 (b) If the department is unable to permanently abate the imminent danger using the amount forfeited

under subsection (10)(a), the department may forfeit additional amounts under the procedure provided in subsection (10)(a).

(c) The department shall return to the surety any money received from the surety pursuant to this subsection (10) and not used by the department to abate the imminent danger. The amount not returned to the surety must be credited to the surety and reduces the penal amount of the bond on a dollar-for-dollar basis.

(d) Any interest accrued on bond proceeds that is not required to abate the imminent danger determined in subsection (10)(a) must be returned to the surety, unless otherwise agreed to in writing by the surety.

(11) If a bond is terminated as a result of the action or inaction of a licensee or permittee or is canceled or otherwise terminated by the surety issuing the bond and the licensee or permittee fails to post a new bond for the entire amount of the terminated bond within 30 days following the notice of termination provided to the department, then the license or permit must be immediately suspended without further action by the department. (Bracketed language in subsection (1)(a) terminates June 30, 2026--sec. 6, Ch. 458, L. 2019.)"

Section 196. Section 82-4-339, MCA, is amended to read:

"82-4-339. Annual report of activities by permittee -- fee -- notice of large-scale mineral developer status. (1) Within 30 days after completion or abandonment of operations on an area under permit or within 30 days after each anniversary date of the permit, whichever is earlier, or at a later date that may be provided by ~~rules of the board~~ rule and each year after that date until reclamation is completed and approved, the permittee shall pay the annual fee of \$100 and shall file a report of activities completed during the preceding year on a form prescribed by the department. The report must:

(a) identify the permittee and the permit number;

(b) locate the operation by subdivision, section, township, and range and with relation to the nearest town or other well-known geographic feature;

(c) estimate acreage to be newly disturbed by operation in the next 12-month period;

(d) include the number of persons on the payroll for the previous permit year and for the next permit year at intervals that the department considers sufficient to enable a determination of the permittee's status under 90-6-302(4);

- 1 (e) update the information required in 82-4-335(5)(a); and
- 2 (f) update any maps previously submitted or specifically requested by the department. The maps
- 3 must show:
- 4 (i) the permit area;
- 5 (ii) the unit of disturbed land;
- 6 (iii) the area to be disturbed during the next 12-month period;
- 7 (iv) if completed, the date of completion of operations;
- 8 (v) if not completed, the additional area estimated to be further disturbed by the operation within the
- 9 following permit year; and
- 10 (vi) the date of beginning, amount, and current status of reclamation performed during the previous 12
- 11 months.

12 (2) Whenever the department determines that the permittee has become or will, during the next

13 permit year, become a large-scale mineral developer, it shall immediately serve written notice of that fact on the

14 permittee, the hard-rock mining impact board, and the county or counties in which the operation is located."

15

16 **Section 197.** Section 82-4-342, MCA, is amended to read:

17 **"82-4-342. Amendment to operating permits.** (1) During the term of an operating permit issued

18 under this part, an operator may apply for a permit revision as described in subsections (5)(g) through (5)(j) or

19 an amendment to the permit. The operator may not apply for an amendment to delete disturbed acreage except

20 following reclamation, as required under 82-4-336, and bond release for the disturbance, as required under 82-

21 4-338.

22 (2) (a) The ~~board~~department may by rule establish criteria for the classification of amendments as

23 major or minor. The ~~board~~department shall adopt rules establishing requirements for the content of

24 applications for revisions and major and minor amendments and the procedures for processing revisions and

25 minor amendments.

26 (b) An amendment must be considered minor if:

- 27 (i) it is for the purpose of retention of mine-related facilities that are valuable for postmining use;
- 28 (ii) evidence is submitted showing that a local government has requested retention of the mine- related

1 facilities for a postmining use; and

2 (iii) the postmining use of the mine-related facilities meets the requirements provided for in 82-4-336.

3 (3) Applications for major amendments must be processed pursuant to 82-4-337.

4 (4) The department shall review an application for a revision or a minor amendment and provide a
5 notice of decision on the adequacy of the application within 30 days. If the department does not respond within
6 30 days, then the permit is revised or amended in accordance with the application.

7 (5) The department is not required to prepare an environmental assessment or an environmental
8 impact statement for the following categories of action and permit revisions:

9 (a) actions that qualify for a categorical exclusion as defined by rule or justified by a programmatic
10 review pursuant to Title 75, chapter 1;

11 (b) administrative actions, such as routine, clerical, or similar functions of a department, including but
12 not limited to administrative procurement, contracts for consulting services, and personnel actions;

13 (c) repair or maintenance of the permittee's equipment or facilities;

14 (d) investigation and enforcement actions, such as data collection, inspection of facilities, or
15 enforcement of environmental standards;

16 (e) ministerial actions, such as actions in which the agency does not exercise discretion, but acts
17 upon a given state of facts in a prescribed manner;

18 (f) approval of actions that are primarily social or economic in nature and that do not otherwise affect
19 the human environment;

20 (g) changes in a permit boundary that increase disturbed acres that are insignificant in impact relative
21 to the entire operation, provided that the increase is less than 25 acres or 10% of the permitted area, whichever
22 is less;

23 (h) changes to an approved reclamation plan if the changes are consistent with this part and rules
24 adopted pursuant to this part;

25 (i) changes in an approved operating plan for an activity that was previously permitted if the changes
26 will be insignificant relative to the entire operation and the changes are consistent with subsection (5)(g);

27 (j) changes in a permit for the purpose of retention of mine-related facilities that are valuable for
28 postmining use; and

- 1 (k) modifications to a tailings storage facility that result in a minor expansion to the facility if:
- 2 (i) the proposed modification is certified by the seal of the engineer of record;
- 3 (ii) the capacity increase resulting from the expansion is no greater than 15% of the capacity of the
- 4 existing tailings storage facility; and
- 5 (iii) the modification complies with 82-4-376(2)(l) and (2)(dd) and is exempt under subsection (5)(g),
- 6 (5)(h), or (5)(i) of this section."
- 7

8 **Section 198.** Section 82-4-353, MCA, is amended to read:

9 **"82-4-353. (Temporary) Administrative remedies -- notice -- appeals -- parties.** (1) Upon receipt

10 of an application for an operating permit, the department shall provide notice of the application by publication in

11 a newspaper of general circulation in the area to be affected by the operation. The notice must be published

12 once a week for 3 successive weeks.

13 (2) An applicant for a permit or license or for an amendment or revision to a permit or license may

14 request a hearing on a denial of the application by submitting a written request for a hearing within 30 days of

15 receipt of written notice of the denial. The request must state the reason that the hearing is requested.

16 (3) All hearings and appeals under 82-4-337(4), 82-4-338(3)(b), 82-4-341(7) and (9), 82-4-361, 82-4-

17 362, and subsection (2) of this section must be conducted by the ~~board~~department in accordance with the

18 Montana Administrative Procedure Act. Any person whose interests may be adversely affected as a result of an

19 action taken pursuant to this part may become a party to any proceeding held under this part upon a showing

20 that the person is capable of adequately representing the interests claimed.

21 (4) As used in this section, "person" means any individual, corporation, partnership, or other legal

22 entity. (Terminates June 30, 2026--sec. 6, Ch. 458, L. 2019.)

23 **82-4-353. (Effective July 1, 2026) Administrative remedies -- notice -- appeals -- parties.** (1)

24 Upon receipt of an application for an operating permit, the department shall provide notice of the application by

25 publication in a newspaper of general circulation in the area to be affected by the operation. The notice must be

26 published once a week for 3 successive weeks.

27 (2) An applicant for a permit or license or for an amendment or revision to a permit or license may

28 request a hearing on a denial of the application by submitting a written request for a hearing within 30 days of

1 receipt of written notice of the denial. The request must state the reason that the hearing is requested.

2 (3) All hearings and appeals under 82-4-337(4), 82-4-338(3)(b), 82-4-341(7) and (8), 82-4-361, 82-4-
3 362, and subsection (2) of this section must be conducted by the ~~board~~department in accordance with the
4 Montana Administrative Procedure Act. Any person whose interests may be adversely affected as a result of an
5 action taken pursuant to this part may become a party to any proceeding held under this part upon a showing
6 that the person is capable of adequately representing the interests claimed.

7 (4) As used in this section, "person" means any individual, corporation, partnership, or other legal
8 entity."
9

10 **Section 199.** Section 82-4-361, MCA, is amended to read:

11 **"82-4-361. Violation -- penalties -- waiver.** (1) When the department has reason to believe that a
12 person is in violation of this part, a rule adopted or an order issued under this part, or a term or condition of a
13 permit issued under this part, it shall send a violation letter to the person. The violation letter must describe the
14 provision of the statute, rule, order, or permit alleged to be violated and the facts alleged to constitute the
15 violation. The letter must also recommend corrective actions that are necessary to return to compliance.
16 Issuance of a violation letter under this subsection does not limit the authority of the department under this part
17 to bring a judicial action for penalties or injunctive relief or to initiate an administrative enforcement action.

18 (2) (a) By issuance of an order pursuant to subsection (6), the department may assess an
19 administrative penalty of not less than \$100 or more than \$1,000 for each of the following violations and an
20 additional administrative penalty of not less than \$100 or more than \$1,000 for each day during which the
21 violation continues and may bring an action for an injunction from continuing the violation against:

22 (i) a person or operator who violates a provision of this part, a rule adopted or an order issued under
23 this part, or a term or condition of a permit; or

24 (ii) any director, officer, or agent of a corporation who purposely or knowingly authorizes, orders, or
25 carries out a violation of a provision of this part, a rule adopted or an order issued under this part, or a term or
26 condition of a permit.

27 (b) If the violation created an imminent danger to the health or safety of the public or caused
28 significant environmental harm, the maximum administrative penalty is \$5,000 for each day of violation.

(c) This subsection does not limit the authority of the department to bring a judicial action for penalties or injunctive relief prior to or instead of initiating an administrative enforcement action under this part.

(3) The department may bring a judicial action seeking a penalty of not more than \$5,000 for a violation listed in subsection (2)(a) and a penalty of not more than \$5,000 for each day that the violation continues.

(4) Penalties assessed under this section must be determined in accordance with the penalty factors in 82-4-1001.

(5) The department may bring an action for a restraining order or a temporary or permanent injunction against an operator or other person violating or threatening to violate an order issued under this part.

(6) (a) In addition to the violation letter sent pursuant to subsection (1), the department may also issue an order if it has credible information that a violation listed in subsection (2) has occurred. The order must specify the provision of the part, rule, order, or permit alleged to be violated and the facts alleged to constitute the violation. The order may require necessary corrective action within a reasonable period of time, may assess an administrative penalty determined in accordance with this section, or both. The order must be served personally or by certified mail.

(b) An order issued pursuant to subsection (6)(a) becomes final unless, within 30 days after the order is served, the person to whom the order is issued submits to the ~~board~~ department a written request for a hearing stating the reason for the request. Service of the order by mail is complete 3 business days after mailing. If a request for a hearing is submitted, a hearing must be held within a reasonable time under the contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6. After a hearing, the ~~board~~ department shall affirm, modify, or rescind the order.

(7) Legal actions for penalties or injunctive relief under this section must be brought in the district court of the county in which the alleged violation occurred or, if mutually agreed to by the parties to the action, in the first judicial district, Lewis and Clark County."

Section 200. Section 82-4-362, MCA, is amended to read:

"82-4-362. Suspension of permits -- hearing. (1) If any of the requirements of this part, of the rules adopted under this part, or of a license or permit has not been complied with, the department shall serve a

1 notice of violation on the licensee or permittee or, if necessary, the director shall order the suspension of the
2 license or permit. A license or permit may also be suspended for failure to comply with an order to pay a civil
3 penalty if the order is not subject to administrative or judicial review. The director may order immediate
4 suspension of a license or permit whenever the director finds that a violation of this part, of the rules adopted
5 under this part, or of a license or permit is creating an imminent danger to the health or safety of persons
6 outside the permit area. The notice or order must be handed to the licensee or permittee in person or served on
7 the licensee or permittee by certified mail addressed to the permanent address shown on the application for a
8 license or permit. The notice of violation or order of suspension must specify the provision of this part, the rules
9 adopted under this part, or the license or permit violated and the facts alleged to constitute the violation and
10 must, if the violation has not been abated, order abatement within a specified time period.

11 (2) If the licensee or permittee has not complied with the requirements set forth in the notice of
12 violation or order of suspension within the time limits set in the notice or order, the license or permit may be
13 revoked by order of the department and the performance bond forfeited to the department. The notice of
14 violation or order of suspension must state when those measures may be undertaken and must give notice of
15 the opportunity for a hearing before the ~~board~~ department. A hearing may be requested by submitting a written
16 request stating the reason for the request to the ~~board~~ department within 30 days after receipt of the notice or
17 order. If a hearing is requested within the 30-day period, the license or permit may not be revoked and the bond
18 may not be forfeited until a final decision is made by the ~~board~~ department.

19 (3) If a permittee fails to pay the fee or file the report required under 82-4-339, the department shall
20 serve notice of this failure, by certified mail or personal delivery, on the permittee. If the permittee does not
21 comply within 30 days of receipt of the notice, the director shall suspend the permit. The director shall reinstate
22 the permit upon compliance."
23

24 **Section 201.** Section 82-4-371, MCA, is amended to read:

25 **"82-4-371. Reclamation of abandoned mine sites.** (1) Agents, employees, or contractors of the
26 department may enter upon property for the purpose of conducting studies or exploratory work to determine
27 whether the property has been mined and not reclaimed and rehabilitated in accordance with the requirements
28 of this part and to determine the feasibility of restoration or reclamation of the property or abatement, control, or

1 prevention of the adverse effects of past mining practices. The department may bring an injunctive action to
2 restrain interference with the exercise of the right to enter and inspect granted in this subsection.

3 (2) (a) The department may enter upon property pursuant to subsection (2)(b) if it makes a finding
4 that:

5 (i) land or water resources on the property have been adversely affected by past mining practices;

6 (ii) the adverse effects are at a stage that, in the public interest, action to restore or reclaim the
7 property or to abate, control, or prevent the adverse effects should be taken; and

8 (iii) the owners of the land or water resources where entry must be made to restore or reclaim the
9 property or to abate, control, or prevent the adverse effects of past mining practices are not known or readily
10 available or the owners will not give permission for the department or its agents, employees, or contractors to
11 enter upon the property to restore or reclaim the property or to abate, control, or prevent the adverse effects of
12 past mining practices.

13 (b) If the department has made findings pursuant to subsection (2)(a), agents, employees, or
14 contractors of the department may enter upon property adversely affected by past mining practices and other
15 property necessary for access to the adversely affected property to do all things necessary or expedient to
16 restore or reclaim the property or to abate, control, or prevent the adverse effects of past mining practices after:

17 (i) giving notice by mail to the owner, if known, and a purchaser under contract for deed, if known; or

18 (ii) if neither is known, posting notice upon the property and advertising in a newspaper of general
19 circulation in the county in which the property lies.

20 (c) Entry upon property pursuant to this section is not an act of condemnation of property or of
21 trespass but rather an exercise of the power granted by Article IX, sections 1 and 2, of the Montana
22 constitution.

23 (3) The ~~board~~department may acquire the necessary property by gift or purchase. A gift or purchase
24 must be approved by the board of land commissioners. If the property cannot be acquired by gift or purchase at
25 a reasonable cost, proceedings may be instituted in the manner provided in Title 70, chapter 30, against all
26 nonaccepting landholders if:

27 (a) acquisition of the property is necessary for successful reclamation;

28 (b) the acquired property after restoration or reclamation or after abatement, control, or prevention of

the adverse effects of past mining practices will serve recreation and historic purposes or conservation and reclamation purposes or provide open space benefits; and

(c) (i) permanent facilities, such as treatment plants or relocated stream channels, will be constructed on the property for the restoration or reclamation of the property or for abatement, control, or prevention of the adverse effects of past mining practices; or

(ii) acquisition of refuse disposal sites and all refuse on the sites will serve the purposes of this part in that public ownership is desirable to meet emergency situations and prevent recurrences of the adverse effects of past mining practices.

(4) The department may record in the office of the clerk and recorder in the county in which property that has been reclaimed pursuant to 82-4-424 or this section is located a notice that the property has been mined and reclaimed. The notice must include the date and a brief description of the reclamation."

Section 202. Section 82-4-403, MCA, is amended to read:

"82-4-403. Definitions. When used in this part, unless a different meaning clearly appears from the context, the following definitions apply:

(1) "Affected land" means the area of land and land covered by water that is disturbed by opencut operations. A private road may be included as affected land only with the landowner's consent.

(2) "Amendment" means a change to the approved permit.

~~(3) "Board" means the board of environmental review provided for in 2-15-3502.~~

~~(4) (3)~~ "Department" means the department of environmental quality provided for in 2-15-3501.

~~(5) (4)~~ "Landowner" means the holder of legal title to land subjected to an opencut operation.

~~(6) (5)~~ "Materials" means bentonite, clay, scoria, peat, sand, soil, gravel, or mixtures of those substances.

~~(7) (6)~~ "Opencut operation" means activities conducted for the primary purpose of sale or utilization of materials, including:

(a) mine site preparation;

(b) (i) removing the overburden and mining directly from the exposed natural deposits; or

(ii) mining directly from natural deposits of materials;

(c) processing of materials mined from the natural deposits, except that processing facilities located more than 300 feet from where materials were mined or are permitted to be mined are not part of the opencut operation;

(d) transporting, depositing, staging, and stockpiling of overburden and materials unless the activity occurs more than 300 feet from where the materials were mined or are permitted to be mined;

(e) storing or stockpiling of materials at processing facilities that are part of the opencut operation;

(f) reclamation of affected land; and

(g) parking or staging of vehicles, equipment, or supplies unless:

(i) the activity is separated from other opencut operations by at least 25 feet and is connected to the opencut operation by a single road that is no more than 25 feet wide; or

(ii) the activity is inside the construction disturbance area shown on a construction project plan.

~~(8)~~ (7) "Operator" means a person who holds a permit issued pursuant to this part. For purposes of enforcing the provisions of this part, the term also includes any person conducting opencut operations on affected land that is not covered by a permit.

~~(9)~~ (8) "Overburden" means the earth that lies above a natural deposit of materials.

~~(10)~~ (9) "Person" means:

(a) a natural person;

(b) a firm, association, partnership, cooperative, or corporation;

(c) a department, agency, or instrumentality of the state or any governmental subdivision; or

(d) any other entity.

~~(11)~~ (10) "Plan of operation" means a plan that:

(a) meets the requirements of 82-4-434; and

(b) contains a description of current land use, topographical data, hydrologic data, soils data, proposed mine areas, proposed mining and processing operations, proposed reclamation, and appropriate maps.

~~(12)~~ (11) "Processing facilities" means:

(a) crushers, screens, and pug mills;

(b) asphalt, wash, and concrete plants;

(c) treatment, sedimentation, or retention areas for processing facilities; and

(d) areas receiving washout from vehicles and equipment using the processing facilities.

~~(13)~~ (12) "Reclamation" means the reconditioning of affected land to make the area suitable for productive use, including but not limited to forestry, agriculture, grazing, wildlife, recreation, or residential or industrial development.

~~(14)~~ (13) "Soil" means the dark or root-bearing surface matter that has been generated through time by the interaction of biological activity, climate, topography, and parent material and that is capable of sustaining plant growth and is recognized and identified as such by standard authorities and methods."

Section 203. Section 82-4-406, MCA, is amended to read:

"82-4-406. Exemption -- opencut operations on federal and state lands. This part is not applicable to operations on certain federal and state lands as specified by the ~~board~~ department, provided it is first determined by the ~~board~~ department that laws, regulations, or rules administered or issued by the federal or state agency administering or having jurisdiction over the affected land impose controls for opencut operations on those lands equal to or greater than those imposed by this part."

Section 204. Section 82-4-422, MCA, is amended to read:

"82-4-422. Powers, duties, and functions. (1) The department has the powers, duties, and functions to:

(a) issue permits when, on the basis of the information set forth in the application and an evaluation of the proposed opencut operations, the department finds that the requirements of this part and rules adopted to implement this part will be observed;

(b) amend permits in accordance with the provisions of 82-4-436;

(c) reclaim any affected land with respect to which a bond has been forfeited;

(d) make investigations or inspections that are considered necessary to ensure compliance with any provision of this part; and

(e) enforce and administer the provisions of this part and issue orders necessary to implement the provisions of this part.

(2) The ~~board~~department shall:

(a) adopt rules that pertain to open-cut operations in order to accomplish the purposes of this part;

(b) adopt rules:

(i) establishing uniform procedures for filing of necessary records;

(ii) providing procedures for the issuance of permits and filing of annual reports; and

(iii) providing other administrative requirements ~~that the board considers~~ necessary to implement this part; and

(c) conduct hearings and, for the purposes of conducting those hearings, administer oaths and affirmations, subpoena witnesses, compel attendance of witnesses, hear evidence, and require the production of any books, papers, correspondence, memoranda, agreements, documents, or other records relevant or material to the inquiry."

Section 205. Section 82-4-427, MCA, is amended to read:

"82-4-427. Hearing -- appeal -- venue. (1) (a) Subject to subsections (1)(b) and (1)(c), a person whose interests are or may be adversely affected by a final decision of the department to approve or disapprove a permit application and accompanying material or a permit amendment application and accompanying material under this part is entitled to a hearing before the ~~board~~department if a written request stating the reasons for the appeal is submitted to the ~~board~~department within 30 days of the department's decision.

(b) If an application was noticed publicly as required by this part, to be eligible to file for an appeal a person must have either submitted comments to the department on an application or submitted comments at a public meeting held under 82-4-432.

(c) Subsection (1)(b) does not apply to a person filing for an appeal of an application that was not required to be noticed publicly by this part.

(2) An operator may request a hearing before the ~~board~~department on:

(a) a final decision of the department director pursuant to 82-4-436(4) by submitting a request for a hearing within 15 days of receipt of notice of the director's decision; and

(b) an order of suspension or revocation issued under 82-4-442 by filing a request for hearing within

1 30 days of receipt of the decision.

2 (3) The operator or the landowner may request a hearing before the ~~board~~ department on a decision
3 on a bond release application by submitting a written request stating the reasons for the appeal within 30 days
4 of the receipt of the decision.

5 (4) The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4,
6 part 6, apply to a hearing held under this section.

7 (5) A petition for judicial review of a ~~board~~ department decision made pursuant to this section must be
8 brought in the county in which the permitted activity is proposed to occur or, if mutually agreed upon by both
9 parties in the action, in the first judicial district, Lewis and Clark County. If an activity is proposed to occur in
10 more than one county, the action may be brought in any of the counties in which the activity is proposed to
11 occur.

12 (6) The petition for judicial review must include the party to whom the permit was issued or the
13 applicant unless otherwise agreed to by the permitholder or applicant. All judicial challenges of permits for
14 projects with a project cost, as determined by the court, of more than \$1 million must have precedence over any
15 civil cause of a different nature pending in that court. If the court determines that the challenge was without
16 merit or was for an improper purpose, such as to harass, to cause unnecessary delay, or to impose needless or
17 increased cost in litigation, the court may award attorney fees and costs incurred in defending the action."

18

19 **Section 206.** Section 82-4-437, MCA, is amended to read:

20 **"82-4-437. Annual report -- fees.** (1) For each opencut operation, the operator shall file an annual
21 report on a form furnished by the department. The report must contain the information and be submitted at
22 times provided in rules of the ~~board~~ department.

23 (2) (a) Except as provided in subsection (2)(b), each opencut operation shall submit with the annual
24 report a fee of 4.5 cents per cubic yard of materials for all operations mined during the period covered by the
25 report.

26 (b) Opencut operations that mine, extract, or produce bentonite are not subject to the fee in
27 subsection (2)(a).

28 (3) The department:

(a) shall require the operator to pay the following fees:

(i) \$1,500 for each permit application submitted pursuant to 82-4-432(1); and

(ii) for each amendment application submitted pursuant to 82-4-432(11):

(A) \$750 if the date of the amendment application is 10 years or less from the date of the permit approval; or

(B) \$1,500 if the date of the amendment application is more than 10 years from the date of the permit approval; and

(b) shall adopt rules for applications or responses that are administrative. Fees, if any, for administrative actions identified under this subsection (3) may not exceed \$250.

(4) Pursuant to the provisions of 82-4-441, a person who mines materials without a permit in violation of this part shall submit a report and the fees required by subsections (2)(a) and (3)(a)(i) of this section."

Section 207. Section 82-4-441, MCA, is amended to read:

"82-4-441. Administrative and judicial penalties -- enforcement. (1) When the department has reason to believe that a person is in violation of this part, a rule adopted or an order issued under this part, or a term or condition of a permit issued under this part, it shall send a violation letter to the person. The violation letter must describe the provision of the statute, rule, order, or permit alleged to be violated and the facts alleged to constitute the violation. The letter must also recommend corrective actions that are necessary to return to compliance. Issuance of a violation letter under this subsection does not limit the authority of the department under this part to bring a judicial action for penalties or injunctive relief or to initiate an administrative enforcement action.

(2) By issuance of an order pursuant to subsection (5), the department may assess against a person who violates any of the provisions of this part, rules adopted or orders issued under this part, or provisions of a permit:

(a) an administrative penalty of not less than \$100 or more than \$1,000 for the violation; and

(b) an additional administrative penalty of not less than \$100 or more than \$1,000 for each day during which a violation continues.

(3) The department may bring a judicial action seeking a penalty of not more than \$5,000 against a

1 person who violates any of the provisions of this part, rules adopted or orders issued under this part, or
2 provisions of a permit and a penalty of not more than \$5,000 for each day that the violation continues. In
3 determining the amount of the penalty, the district court shall consider the factors in subsection (4).

4 (4) Penalties assessed under this section must be determined in accordance with the penalty factors
5 in 82-4-1001.

6 (5) (a) In addition to the violation letter sent pursuant to subsection (1), the department may also
7 issue an order if it has credible information that a violation listed in subsection (2) has occurred. The order must
8 specify the provision of the part, rule, order, or permit alleged to be violated and the facts alleged to constitute
9 the violation. The order may require necessary corrective action within a reasonable period of time, may assess
10 an administrative penalty determined in accordance with this section, or both. The order must be served
11 personally or by certified mail.

12 (b) An order issued pursuant to subsection (5)(a) becomes final unless, within 30 days after the order
13 is served, the person to whom the order is issued submits to the ~~board~~department a written request for a
14 hearing stating the reason for the request. Service of an order by mail is complete 3 business days after
15 mailing. If a request for a hearing is filed, a hearing must be held within a reasonable time under the contested
16 case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6. After a hearing, the
17 ~~board~~department shall affirm, modify, or rescind the order.

18 (6) The department may bring an action to enjoin an operator or other person violating or threatening
19 to violate this part, rules adopted pursuant to this part, or a permit issued pursuant to this part. Actions for
20 injunctions or penalties must be filed in the district court of the county in which the opencut operation is located
21 or, if mutually agreed on by both parties in the action, in the first judicial district, Lewis and Clark County.

22 (7) The provisions of this section do not limit the authority of the department to bring a judicial action
23 for penalties or injunctive relief prior to or instead of initiating an administrative enforcement action under this
24 part."

25
26 **Section 208.** Section 82-4-442, MCA, is amended to read:

27 **"82-4-442. Suspension and revocation orders.** (1) (a) The department may, after affording the
28 operator an opportunity for an informal conference, order the suspension of a permit if:

(i) the operator fails to comply with a penalty order or a corrective action order issued pursuant to 82-4-441; or

(ii) the operator has violated this part, a rule adopted pursuant to this part, or the permit and the violation could reasonably be expected to create a danger to the health or safety of persons outside the permit area or significant environmental harm to land, air, or water. The order of suspension must be served on the operator personally or by certified mail addressed to the permanent address shown on the most recently filed annual report. The order of suspension must specify the provision of this part, the rules adopted under this part, or the permit violated and the facts alleged to constitute the violation and must, if the violation has not been corrected, order corrective action within a specified time period.

(b) The department may order immediate suspension of a permit whenever it finds that a violation of this part, the rules adopted under this part, or a permit is creating an imminent danger to the health or safety of persons outside the permit area. The order must require immediate corrective action.

(c) The operator upon whom an order is served may file a request for hearing with the ~~board~~ department within 30 days of service of the order. The request for hearing must specify the reason for the request. The filing of a request for hearing on an order issued does not stay the suspension or corrective action requirement, but the ~~board~~ department may, upon written request of the operator, stay either or both of these requirements.

(2) If the operator has not complied with the requirements set forth in the order of suspension within the time limits set in the order, the permit may be revoked by order of the department and the performance bond forfeited to the department. The operator may request a hearing before the ~~board~~ department by submitting a written request stating the reason for the request to the ~~board~~ department within 30 days after service of the order. If a hearing is requested within the 30-day period, the permit may not be revoked and the bond may not be forfeited until the ~~board~~ department makes a final decision.

(3) If an operator fails to file the report required under 82-4-437, the department shall serve personally or by certified mail a notice letter informing the operator of the failure. If the operator does not file the report within 30 days of receipt of the letter, the department may issue a penalty order pursuant to 82-4-441 or a suspension order pursuant to this section. If the permit has been suspended, the department shall reinstate the permit upon compliance.

(4) Maintenance, monitoring, reporting, reclamation, and other activities required by statute, rule, or the permit and intended to protect public health or safety or the environment must continue during any period of suspension unless otherwise provided in the order."

Section 209. Section 82-4-445, MCA, is amended to read:

"82-4-445. Reclamation of abandoned mine sites. (1) Agents, employees, or contractors of the department may enter upon property for the purpose of conducting studies or exploratory work to determine whether the property has been mined and not reclaimed and rehabilitated in accordance with the requirements of this part and to determine the feasibility of restoration or reclamation of the property or abatement, control, or prevention of the adverse effects of past mining practices. The department may bring an injunctive action to restrain interference with the exercise of the right to enter and inspect granted in this subsection.

(2) (a) The department may enter upon property pursuant to subsection (2)(b) if it makes a finding that:

(i) land or water resources on the property have been adversely affected by past mining practices;

(ii) the adverse effects are at a stage that, in the public interest, action to restore or reclaim the property or to abate, control, or prevent the adverse effects should be taken; and

(iii) the owners of the land or water resources where entry must be made to restore or reclaim the property or to abate, control, or prevent the adverse effects of past mining practices are not known or readily available or the owners will not give permission for the department or its agents, employees, or contractors to enter upon the property to restore or reclaim the property or to abate, control, or prevent the adverse effects of past mining practices.

(b) If the department has made findings pursuant to subsection (2)(a), agents, employees, or contractors of the department may enter upon property adversely affected by past mining practices and other property necessary for access to the adversely affected property to do all things necessary or expedient to restore or reclaim the property or to abate, control, or prevent the adverse effects of past mining practices after:

(i) giving notice by mail to the owner, if known, and a purchaser under contract for deed, if known; or

(ii) if neither is known, posting notice upon the property and advertising in a newspaper of general circulation in the county in which the property lies.

(c) Entry upon property pursuant to this section is not an act of condemnation of property or of trespass but rather an exercise of the power granted by Article IX, sections 1 and 2, of the Montana constitution.

(3) The ~~board~~ department may acquire the necessary property by gift or purchase, or if the property cannot be acquired by gift or purchase at a reasonable cost, proceedings may be instituted in the manner provided in Title 70, chapter 30, against all nonaccepting landholders if:

(a) acquisition of the property is necessary for successful reclamation;

(b) the acquired property after restoration or reclamation or after abatement, control, or prevention of the adverse effects of past mining practices will serve recreation and historic purposes or conservation and reclamation purposes or provide open space benefits; and

(c) (i) permanent facilities, such as treatment plants or relocated stream channels, will be constructed on the property for the restoration or reclamation of the property or for abatement, control, or prevention of the adverse effects of past mining practices; or

(ii) acquisition of refuse disposal sites and all refuse on the sites will serve the purposes of this part in that public ownership is desirable to meet emergency situations and prevent recurrences of the adverse effects of past mining practices.

(4) The department may record in the office of the clerk and recorder in the county in which property that has been reclaimed pursuant to 82-4-424 or this section is located a notice that the property has been mined and reclaimed. The notice must include the date and a brief description of the reclamation."

Section 210. Section 82-4-1001, MCA, is amended to read:

"82-4-1001. Penalty factors. (1) In determining the amount of an administrative or civil penalty assessed under the statutes listed in subsection (4), the department of environmental quality or the district court, as appropriate, shall take into account the following factors:

(a) the nature, extent, and gravity of the violation;

(b) the circumstances of the violation;

(c) the violator's prior history of any violation, which:

(i) must be a violation of a requirement under the authority of the same chapter and part as the

1 violation for which the penalty is being assessed;

2 (ii) must be documented in an administrative order or a judicial order or judgment issued within 3 years
3 prior to the date of the occurrence of the violation for which the penalty is being assessed; and

4 (iii) may not, at the time that the penalty is being assessed, be undergoing or subject to administrative
5 appeal or judicial review;

6 (d) the economic benefit or savings resulting from the violator's action;

7 (e) the violator's good faith and cooperation;

8 (f) the amounts voluntarily expended by the violator, beyond what is required by law or order, to
9 address or mitigate the violation or impacts of the violation; and

10 (g) other matters that justice may require.

11 (2) Except for penalties assessed under 82-4-254, after the amount of a penalty is determined under
12 (1), the department of environmental quality or the district court, as appropriate, may consider the violator's
13 financial ability to pay the penalty and may institute a payment schedule or suspend all or a portion of the
14 penalty.

15 (3) Except for penalties assessed under 82-4-254, the department of environmental quality may
16 accept a supplemental environmental project as mitigation for a portion of the penalty. For purposes of this
17 section, a "supplemental environmental project" is an environmentally beneficial project that a violator agrees to
18 undertake in settlement of an enforcement action but which the violator is not otherwise legally required to
19 perform.

20 (4) This section applies to penalties assessed by the department of environmental quality or the
21 district court under 82-4-141, 82-4-254, 82-4-361, and 82-4-441.

22 (5) ~~The board of environmental review and the department of environmental quality may, for the~~
23 ~~statutes listed in subsection (4) for which each has rulemaking authority, adopt rules to implement this section."~~

24
25 **Section 211.** Section 82-15-102, MCA, is amended to read:

26 **"82-15-102. Enforcement of part -- rules.** (1) Except as provided in subsection (2), this part must be
27 enforced by the department. It may adopt necessary and reasonable rules for the implementation of the
28 provisions and intent of this part, and those rules have the effect of law.

(2) Section 82-15-110(8) must be enforced by the department of environmental quality.

(3) The ~~board of environmental review~~ department of environmental quality shall adopt rules for the regulation of methyl tertiary butyl ether in accordance with this part. The rules must establish:

(a) a trace level or trace levels of methyl tertiary butyl ether that may be contained in gasoline that is imported into the state, stored, distributed, sold, offered or exposed for sale, or dispensed in the state of Montana. The ~~board~~ department of environmental quality shall establish trace levels in a manner that prevents the intentional addition of methyl tertiary butyl ether to gasoline but that allows for a residual amount of methyl tertiary butyl ether to remain in tanks following implementation of 82-15-110(8).

(b) reasonable sampling and reporting requirements; and

(c) requirements that the ~~board~~ department of environmental quality determines are reasonable and necessary for implementation of the portions of this part that apply to methyl tertiary butyl ether."

Section 212. Section 82-15-120, MCA, is amended to read:

"82-15-120. Department of environmental quality to enforce prohibition on methyl tertiary butyl ether -- notice requirements -- hearing -- penalties. (1) (a) Whenever the department of environmental quality believes that a violation of 82-15-110(8) or of the rules adopted pursuant to 82-15-102(3) has occurred, it may serve written notice of the violation on the alleged violator or an agent of the alleged violator.

(b) The notice must specify the facts alleged to constitute a violation and may include an order assessing an administrative penalty pursuant to subsection (3), an order to take necessary corrective action within a reasonable period of time stated in the order, or both.

(c) The order becomes final unless, within 30 days after the notice is served, the person named in the order requests in writing a hearing before the ~~board of environmental review~~ department of environmental quality. Service by mail is complete on the date of mailing.

(d) Upon receipt of the request, the ~~board of environmental review~~ department of environmental quality shall schedule a hearing. The contested case provisions of the Montana Administrative Procedure Act provided in Title 2, chapter 4, part 6, apply to a hearing conducted under this section.

(2) If, after a hearing held under subsection (1), the ~~board of environmental review~~ department of environmental quality finds that a violation has occurred, it shall either affirm or modify ~~the its order of the~~

~~department of environmental quality~~. An order issued by the department of environmental quality ~~or by the~~
~~board of environmental review~~ may prescribe the date by which the violation must cease and may prescribe
time limits for a particular action. If, after hearing, the ~~board of environmental review~~ department of
environmental quality finds no violation has occurred, it shall rescind the ~~department of environmental quality's~~
order.

(3) A violation of 82-15-110(8) or of a rule adopted pursuant to 82-15-102(3) is subject to an
administrative penalty of up to \$1,000. Each day of violation constitutes a separate violation.

(4) Any person who violates 82-15-110(8), a rule adopted pursuant to 82-15-102(3), or an order
issued under this section is subject to a civil penalty not to exceed \$5,000 for each violation. Each day of
violation constitutes a separate violation.

(5) The department of environmental quality is authorized to commence a civil action seeking
appropriate relief, including temporary and permanent injunctions and penalties under subsection (4) of this
section, for a violation of 82-15-110(8), a rule adopted pursuant to 82-15-102(3), or a violation of an order
issued under this section. The action must be brought in the district court of the first judicial district, Lewis and
Clark County, or in the district court of the county in which the violation occurred."

NEW SECTION. Section 213. Repealer. The following sections of the Montana Code Annotated are
repealed:

2-15-3502. Board of environmental review.

75-2-111. Powers of board.

75-6-103. Duties of board.

75-10-106. Duties of board.

82-4-111. Rules of board -- hearings.

82-4-204. Board rules.

NEW SECTION. Section 214. Name change -- directions to code commissioner. Wherever a
reference to the board of environmental review, meaning the board established in 2-15-3502, appears in
legislation enacted by the 2021 legislature, the code commissioner is directed to change it to an appropriate

1 reference to the department of environmental quality.

2 - END -

SENATE BILL NO. 233

INTRODUCED BY D. ANKNEY

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATED TO THE BOARD OF ENVIRONMENTAL REVIEW; REASSIGNING DUTIES AND POWERS OF THE BOARD OF ENVIRONMENTAL REVIEW; TRANSFERRING RULEMAKING AUTHORITY; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTIONS 7-13-4502, 7-13-4513, 7-13-4517, ~~15-24-3001, 37-42-102, 37-42-321,~~ 50-2-116, ~~50-79-401, 50-79-403, 75-1-220, 75-1-1001, 75-2-103, 75-2-104, 75-2-105, 75-2-111, 75-2-112, 75-2-201, 75-2-202, 75-2-203, 75-2-204, 75-2-206, 75-2-207, 75-2-211, 75-2-212, 75-2-213, 75-2-215, 75-2-217, 75-2-218, 75-2-219, 75-2-220, 75-2-221, 75-2-231, 75-2-234, 75-2-301, 75-2-302, 75-2-401, 75-2-402, 75-2-411, 75-2-421, 75-2-422, 75-2-425, 75-2-426, 75-2-428, 75-2-515, 75-5-103, 75-5-105, 75-5-106, 75-5-201, 75-5-202, 75-5-203, 75-5-222, 75-5-301, 75-5-302, 75-5-303, 75-5-304, 75-5-305, 75-5-307, 75-5-308, 75-5-310, 75-5-311, 75-5-312, 75-5-313, 75-5-314, 75-5-315, 75-5-316, 75-5-318, 75-5-401, 75-5-402, 75-5-403, 75-5-404, 75-5-502, 75-5-514, 75-5-515, 75-5-516, 75-5-611, 75-5-614, 75-5-621, 75-5-641, 75-5-702, 75-5-802, 75-6-102, 75-6-104, 75-6-105, 75-6-106, 75-6-107, 75-6-108, 75-6-109, 75-6-112, 75-6-113, 75-6-116, 75-6-121, 75-6-131, 75-10-103, 75-10-104, 75-10-112, 75-10-115, 75-10-203, 75-10-206, 75-10-221, 75-10-223, 75-10-224, 75-10-227, 75-10-403, 75-10-406, 75-10-408, 75-10-409, 75-10-413, 75-10-414, 75-10-417, 75-10-418, 75-10-424, 75-10-501, 75-10-515, 75-10-540, 75-10-714, 75-10-727, 75-10-732, 75-10-736, 75-10-1201, 75-10-1221, 75-10-1222, 75-11-203, 75-11-211, 75-11-218, 75-11-219, 75-11-223, 75-11-224, 75-11-503, 75-11-505, 75-11-508, 75-11-509, 75-11-512, 75-11-513, 75-11-516, 75-11-525, 75-20-104, 75-20-105, 75-20-201, 75-20-207, 75-20-208, 75-20-211, 75-20-215, 75-20-216, 75-20-219, 75-20-223, 75-20-301, 75-20-303, 75-20-304, 75-20-401, 75-20-406, 75-20-407, 75-20-410, 75-20-411, 75-20-1001, 75-20-1202, 75-20-1203, 75-20-1205, 75-26-301, 75-26-304, 76-3-622, 76-4-102, 76-4-108, 76-4-126, 76-4-1001, 80-15-102, 80-15-105, 80-15-110, 80-15-201, 82-4-102, 82-4-103, 82-4-112, 82-4-123, 82-4-129, 82-4-130, 82-4-203, 82-4-205, 82-4-206, 82-4-207, 82-4-223, 82-4-226, 82-4-227, 82-4-231, 82-4-232, 82-4-234, 82-4-235, 82-4-239, 82-4-251, 82-4-254, 82-4-303, 82-4-304, 82-4-305, 82-4-309, 82-4-321, 82-4-332, 82-4-335, 82-4-338, 82-4-339, 82-4-342, 82-4-353, 82-4-361, 82-4-362, 82-4-371, 82-4-403, 82-4-406, 82-4-422, 82-4-427, 82-4-437, 82-4-441, 82-4-~~

1 442, 82-4-445, 82-4-1001, AND 82-15-102, AND 82-15-120, MCA; AND REPEALING SECTIONS 2-15-3502,
2 75-2-111, 75-6-103, 75-10-106, 82-4-111, AND 82-4-204, MCA; AND PROVIDING AN EFFECTIVE DATE."

3
4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

5
6 **Section 1.** Section 7-13-4502, MCA, is amended to read:

7 **"7-13-4502. Definitions.** As used in this part, unless the context indicates otherwise, the following
8 definitions apply:

9 (1) "Board of directors" means the board of directors provided for in 7-13-4516 or a joint board of
10 directors provided for in 7-13-4527.

11 ~~(2) "Board of environmental review" means the board of environmental review as provided in 2-15-~~
12 ~~3502-~~

13 ~~(3)(2)~~ (2) "Commissioners" means the board of county commissioners or the governing body of a city-
14 county consolidated government.

15 (3) "Department" means the department of environmental quality provided for in 2-15-3501.

16 (4) "Family residential unit" means a single-family dwelling.

17 (5) "Fee-assessed units" means all real property with improvements, including taxable and tax-
18 exempt property as shown on the property assessment records maintained by the county, and mobile homes
19 and manufactured homes as defined in 15-24-201.

20 (6) "Local water quality district" means an area established with definite boundaries for the purpose of
21 protecting, preserving, and improving the quality of surface water and ground water in the district as authorized
22 by this part."

23
24 **Section 2.** Section 7-13-4513, MCA, is amended to read:

25 **"7-13-4513. Insufficient protest to bar proceedings -- resolution creating district -- power to**
26 **implement local water quality program.** (1) The commissioners may create a local water quality district,
27 establish fees, and appoint a board of directors if the commissioners find that insufficient protests have been
28 made in accordance with 7-13-4511 or if the registered voters who reside in the proposed district have

1 approved a referendum as provided in 7-13-4512.

2 (2) To create a local water quality district, the commissioners shall pass a resolution in accordance
3 with the resolution of intention introduced and passed by the commissioners or in accordance with the terms of
4 the referendum.

5 (3) The commissioners and board of directors may implement a local water quality program after the
6 program is approved by the ~~board of environmental review~~ department pursuant to 75-5-311."

7

8 **Section 3.** Section 7-13-4517, MCA, is amended to read:

9 **"7-13-4517. Powers and duties of board of directors.** The board of directors of a local water quality
10 district, with the approval of the commissioners, may:

11 (1) develop a local water quality program, to be submitted to the ~~board of environmental review~~
12 department, for the protection, preservation, and improvement of the quality of surface water and ground water
13 in the district. In developing the program, the board of directors shall consult with the board or boards of
14 supervisors of conservation districts, established as provided in 76-15-201, whose geographical area of
15 jurisdiction is included within the boundaries of the local water quality district.

16 (2) implement a local water quality program;

17 (3) administer the budget of the local water quality district;

18 (4) employ personnel;

19 (5) purchase, rent, or lease equipment and material necessary to develop and implement an effective
20 program;

21 (6) cooperate or contract with any corporation, association, individual, or group of individuals,
22 including any agency of the federal, state, or local government, in order to develop and implement an effective
23 program;

24 (7) receive gifts, grants, or donations for the purpose of advancing the program and acquire, by gift,
25 deed, or purchase, land necessary to implement the local water quality program;

26 (8) administer local ordinances that are adopted by the commissioners and governing bodies of the
27 participating cities and towns and that pertain to the protection, preservation, and improvement of the quality of
28 surface water and ground water;

(9) apply for and receive from the federal government or the state government, on behalf of the local water quality district, money to aid the local water quality program;

(10) borrow money for assistance in planning or refinancing a local water quality district and repay loans with the money received from the established fees; and

(11) construct facilities that cost not more than \$5,000 and maintain facilities necessary to accomplish the purposes of the district, including but not limited to facilities for removal of water-borne contaminants; water quality improvement; sanitary sewage collection, disposal, and treatment; and storm water or surface water drainage collection, disposal, and treatment."

Section 4. Section 15-24-3001, MCA, is amended to read:

~~"15-24-3001. Electrical generation and transmission facility exemption -- definitions. (1) (a) Except as provided in subsections (1)(b) and (3), an electrical generation facility and related delivery facilities constructed in the state of Montana after May 5, 2001, and before January 1, 2006, may be exempt from property taxation for a 10-year period beginning on the date that an owner or operator of an electrical generation facility and related delivery facilities commences to construct the facility as defined in 75-20-104(6)(a) and (6)(b) 75-20-104(5)(a) and (5)(b). In order to be exempt from property taxation, an owner and operator of an electrical generation facility and related delivery facilities shall offer contracts to sell 50% of that facility's net generating output at a cost-based rate, which includes a rate of return not to exceed 12%, to customers for a 20-year period from the date of the facility's completion.~~

~~(b) The property tax exemption allowed under subsection (1)(a) is limited to a 5-year period for generation facilities powered by oil or gas turbines.~~

~~(2) To the extent that 50% of the net generating output of the facility is not contracted for delivery to consumers for a contract term extending 5 years to 20 years from the completion of the facility, as determined by the owner, surplus capacity must be offered on a declining contract term basis for the remainder of the contract period at a cost-based rate that includes a rate of return not to exceed 12%. Surplus capacity that is not contracted for in this fashion may be sold at market rates.~~

~~(3) (a) Except as provided in subsection (3)(c), if an owner or operator of property exempt from taxation under subsection (1)(a) signs a contract to sell power as required in subsection (1) and then fails to~~

perform the contract during the first 10-year period, the 10-year property tax exemption in subsection (1) is void and the property is subject to a rollback tax as provided in 15-24-3002.

(b) Except as provided in subsection (3)(c), if an owner or operator of property exempt from taxation under subsection (1)(b) signs a contract to sell power as required in subsection (1) and then fails to perform the contract during the first 5-year period, the 5-year property tax exemption in subsection (1) is void and the property is subject to a rollback tax as provided in 15-24-3002.

(c) If an owner or operator fails to perform the contract due to earthquakes or other acts of God, theft, sabotage, acts of war, other social instabilities, or equipment failure, the property tax exemption in subsection (1)(a) or (1)(b) is not void and the owner or operator is not subject to the rollback tax as provided in 15-24-3002.

(4) For the purposes of this section, the following definitions apply:

(a) (i) "Electrical generation facility" means any combination of a physically connected generator or generators, associated prime movers, and other associated property, including appurtenant land and improvements and personal property, that are normally operated together to produce 20 average megawatts or more of electric power. The term is limited to generating facilities that produce electricity from coal-fired steam turbines, oil or gas turbines, or turbine generators that are driven by falling water.

(ii) The term does not include:

(A) electrical generation facilities used for noncommercial purposes or exclusively for agricultural purposes; or

(B) a qualifying small power production facility, as that term is defined in 16 U.S.C. 796(17), that is owned and operated by a person not primarily engaged in the generation or sale of electricity other than electric power from a small power production facility and that is classified under 15-6-134 and 15-6-138.

(b) "Related delivery facilities" means transmission facilities necessary to deliver the energy from the electrical generation facility to the existing network transmission system.

(c) "Surplus capacity" means that portion of the 50% of net generating output not contracted for use.

(5) The department shall appraise exempt electrical generation facilities for each year that the property is exempt and determine the taxable value of the property as if it were subject to property taxation."

Section 5. Section 37-42-102, MCA, is amended to read:

~~"37-42-102. Definitions.~~ Unless the context requires otherwise, in this chapter, the following definitions apply:

~~(1) "Board" means the board of environmental review provided for in 2-15-3502.~~

~~(2)(1) "Certificate" means a certificate of competency issued by the department, stating that the operator holding the certificate has met the requirements for the specified operator classification of the certification program.~~

~~(3)(2) "Community water system" means a public water supply system that serves at least 15 service connections used by year-round residents or that regularly serves at least 25 year-round residents.~~

~~(4)(3) "Council" means the water and wastewater operators' advisory council provided for in 2-15-2105.~~

~~(5)(4) "Department" means the department of environmental quality provided for in 2-15-3501.~~

~~(6)(5) "Industrial waste" means any waste substance from the processes of business or industry or from the development of a natural resource, together with any sewage that may be present.~~

~~(7)(6) "Industrial waste discharge system" means a system that discharges industrial waste into state waters.~~

~~(8)(7) "Nontransient noncommunity water system" means a public water system, as defined in 75-6-202, that is not a community system and that regularly serves at least 25 of the same persons for at least 6 months a year.~~

~~(9)(8) "Operator" means the person in direct responsible charge of the operation of a water treatment plant, water distribution system, or wastewater treatment plant.~~

~~(10)(9) "State waters" means the term as defined in 75-6-102.~~

~~(11)(10) "Wastewater treatment plant" means a facility that:~~

~~(a) is designed to remove solids, bacteria, or other harmful constituents of sewage, industrial waste, or other wastes; and~~

~~(b) is part of either an industrial waste discharge system or a public sewage system as defined in 75-6-102.~~

~~(12)(11) "Water distribution system" means that portion of the water supply system that conveys water from the water treatment plant or other supply source to the premises of the consumer and that is part of a~~

community water system or a nontransient noncommunity water system.

~~(13)(12) "Water supply system" means a system of pipes, structures, and facilities through which water is obtained, treated, sold, distributed, or otherwise offered to the public for household use or use by humans and that is part of a community water system or a nontransient noncommunity water system.~~

~~(14)(13) "Water treatment plant" means that portion of the water supply system that alters either the physical, chemical, or bacteriological quality of the water and renders it safe and palatable for human use."~~

Section 6. Section 37-42-321, MCA, is amended to read:

~~"37-42-321. Revocation of operator's certificate -- disciplinary action by department. (1) The department may issue an order revoking the certificate of an operator when the department finds that:~~

~~(a) the operator has practiced fraud or deception;~~

~~(b) reasonable care, judgment, or the application of the operator's knowledge or ability was not used in the performance of the operator's duties; or~~

~~(c) the operator is incompetent or unable to properly perform the operator's duties.~~

~~(2) The department may issue an order taking any disciplinary action listed in 37-1-136.~~

~~(3) A person aggrieved by an order of the department under this section may request a hearing before the board department by submitting a written request stating the reason for the request within 30 days after receipt of the department's decision.~~

~~(4) The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing held under this section."~~

Section 4. Section 50-2-116, MCA, is amended to read:

"50-2-116. Powers and duties of local boards of health. (1) In order to carry out the purposes of the public health system, in collaboration with federal, state, and local partners, each local board of health shall:

(a) appoint and fix the salary of a local health officer who is:

(i) a physician;

(ii) a person with a master's degree in public health; or

(iii) a person with equivalent education and experience, as determined by the department;

- 1 (b) elect a presiding officer and other necessary officers;
- 2 (c) employ qualified staff;
- 3 (d) adopt bylaws to govern meetings;
- 4 (e) hold regular meetings at least quarterly and hold special meetings as necessary;
- 5 (f) identify, assess, prevent, and ameliorate conditions of public health importance through:
- 6 (i) epidemiological tracking and investigation;
- 7 (ii) screening and testing;
- 8 (iii) isolation and quarantine measures;
- 9 (iv) diagnosis, treatment, and case management;
- 10 (v) abatement of public health nuisances;
- 11 (vi) inspections;
- 12 (vii) collecting and maintaining health information;
- 13 (viii) education and training of health professionals; or
- 14 (ix) other public health measures as allowed by law;
- 15 (g) protect the public from the introduction and spread of communicable disease or other conditions of
- 16 public health importance, including through actions to ensure the removal of filth or other contaminants that
- 17 might cause disease or adversely affect public health;
- 18 (h) supervise or make inspections for conditions of public health importance and issue written orders
- 19 for compliance or for correction, destruction, or removal of the conditions;
- 20 (i) bring and pursue actions and issue orders necessary to abate, restrain, or prosecute the violation
- 21 of public health laws, rules, and local regulations;
- 22 (j) identify to the department an administrative liaison for public health. The liaison must be the local
- 23 health officer in jurisdictions that employ a full-time local health officer. In jurisdictions that do not employ a full-
- 24 time local health officer, the liaison must be the highest ranking public health professional employed by the
- 25 jurisdiction.
- 26 (k) subject to the provisions of 50-2-130, adopt necessary regulations that are not less stringent than
- 27 state standards for the control and disposal of sewage from private and public buildings and facilities that are
- 28 not regulated by Title 75, chapter 6, or Title 76, chapter 4. The regulations must describe standards for granting

1 variances from the minimum requirements that are identical to standards promulgated by the ~~board of~~
2 ~~environmental review~~ department of environmental quality and must provide for appeal of variance decisions to
3 the department of environmental quality as required by 75-5-305. If the local board of health regulates or
4 permits water well drilling, the regulations must prohibit the drilling of a well if the well isolation zone, as defined
5 in 76-4-102, encroaches onto adjacent private property without the authorization of the private property owner.

6 (2) Local boards of health may:

7 (a) accept and spend funds received from a federal agency, the state, a school district, or other
8 persons or entities;

9 (b) adopt necessary fees to administer regulations for the control and disposal of sewage from private
10 and public buildings and facilities;

11 (c) adopt regulations that do not conflict with 50-50-126 or rules adopted by the department:

12 (i) for the control of communicable diseases;

13 (ii) for the removal of filth that might cause disease or adversely affect public health;

14 (iii) subject to the provisions of 50-2-130, for sanitation in public and private buildings and facilities that
15 affects public health and for the maintenance of sewage treatment systems that do not discharge effluent
16 directly into state water and that are not required to have an operating permit as required by rules adopted
17 under 75-5-401;

18 (iv) subject to the provisions of 50-2-130 and Title 50, chapter 48, for tattooing and body-piercing
19 establishments and that are not less stringent than state standards for tattooing and body-piercing
20 establishments;

21 (v) for the establishment of institutional controls that have been selected or approved by the:

22 (A) United States environmental protection agency as part of a remedy for a facility under the federal
23 Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9601, et seq.; or

24 (B) department of environmental quality as part of a remedy for a facility under the Montana
25 Comprehensive Environmental Cleanup and Responsibility Act, Title 75, chapter 10, part 7; and

26 (vi) to implement the public health laws; and

27 (d) promote cooperation and formal collaborative agreements between the local board of health and
28 tribes, tribal organizations, and the Indian health service regarding public health planning, priority setting,

information and data sharing, reporting, resource allocation, service delivery, jurisdiction, and other matters addressed in this title.

(3) A local board of health may provide, implement, facilitate, or encourage other public health services and functions as considered reasonable and necessary."

Section 8. Section 50-79-401, MCA, is amended to read:

~~"50-79-401. Administrative hearings.~~ In a proceeding under this chapter for granting, suspending, revoking, or amending a license or for determining compliance with or granting exceptions from rules adopted under this chapter, the board of environmental review department shall first afford an opportunity for a hearing on the record upon the request of a person whose interest may be affected by the proceeding and shall admit the person as a party to the proceeding."

Section 9. Section 50-79-403, MCA, is amended to read:

~~"50-79-403. Emergency orders and rules.~~ When the department finds that an emergency exists requiring immediate action to protect the public health and safety, the department may, without notice or hearing, issue a rule or order reciting the existence of the emergency and requiring that such action be taken as considered necessary to meet the emergency. Notwithstanding any provision of this chapter to the contrary, the rule or order is effective immediately. A person to whom the rule or order is directed shall comply with it immediately but on application to the board shall department must be afforded a prompt hearing. On the basis of the hearing the emergency rule or order shall must be continued, modified, or revoked by the board department within 30 days after the hearing or when the emergency no longer exists."

Section 10. Section 75-1-220, MCA, is amended to read:

~~"75-1-220. Definitions.~~ For the purposes of this part, the following definitions apply:

(1) ~~"Alternatives analysis"~~ means an evaluation of different parameters, mitigation measures, or control measures that would accomplish the same objectives as those included in the proposed action by the applicant. For a project that is not a state-sponsored project, it does not include an alternative facility or an alternative to the proposed project itself. The term includes alternatives required pursuant to Title 75, chapter

20.

(2) ~~"Appropriate board" means, for administrative actions taken under this part by the:~~

(a) ~~department of environmental quality, the board of environmental review, as provided for in 2-15-3502;~~

(b) ~~(a) department of fish, wildlife, and parks, the fish and wildlife commission, as provided for in 2-15-3402, and the state parks and recreation board, as provided for in 2-15-3406;~~

(c) ~~(b) department of transportation, the transportation commission, as provided for in 2-15-2502;~~

(d) ~~(c) department of natural resources and conservation for state trust land issues, the board of land commissioners, as provided for in Article X, section 4, of the Montana constitution;~~

(e) ~~(d) department of natural resources and conservation for oil and gas issues, the board of oil and gas conservation, as provided for in 2-15-3303; and~~

(f) ~~(e) department of livestock, the board of livestock, as provided for in 2-15-3102.~~

(3) ~~"Complete application" means, for the purpose of complying with this part, an application for a permit, license, or other authorization that contains all data, studies, plans, information, forms, fees, and signatures required to be included with the application sufficient for the agency to approve the application under the applicable statutes and rules.~~

(4) ~~"Cumulative impacts" means the collective impacts on the human environment within the borders of Montana of the proposed action when considered in conjunction with other past, present, and future actions related to the proposed action by location or generic type.~~

(5) ~~"Environmental review" means any environmental assessment, environmental impact statement, or other written analysis required under this part by a state agency of a proposed action to determine, examine, or document the effects and impacts of the proposed action on the quality of the human and physical environment within the borders of Montana as required under this part.~~

(6) ~~"Project sponsor" means any applicant, owner, operator, agency, or other entity that is proposing an action that requires an environmental review. If the action involves state agency-initiated actions on state trust lands, the term also includes each institutional beneficiary of any trust as described in The Enabling Act of Congress, approved February 22, 1899, 25 Stat. 676, as amended, the Morrill Act of 1862, 7 U.S.C. 301 through 308, and the Morrill Act of 1890, 7 U.S.C. 321 through 329.~~

~~(7) "Public scoping process" means any process to determine the scope of an environmental review.~~

~~(8) (a) "State-sponsored project" means:~~

~~(i) a project, program, or activity initiated and directly undertaken by a state agency;~~

~~(ii) except as provided in subsection (8)(b)(i), a project or activity supported through a contract, grant, subsidy, loan, or other form of funding assistance from a state agency, either singly or in combination with one or more other state agencies; or~~

~~(iii) except as provided in subsection (8)(b)(i), a project or activity authorized by a state agency acting in a land management capacity for a lease, easement, license, or other authorization to act.~~

~~(b) The term does not include:~~

~~(i) a project or activity undertaken by a private entity that is made possible by the issuance of permits, licenses, leases, easements, grants, loans, or other authorizations to act by the:~~

~~(A) department of environmental quality pursuant to Titles 75, 76, or 82;~~

~~(B) department of fish, wildlife, and parks pursuant to Title 87, chapter 4, part 4;~~

~~(C) board of oil and gas conservation pursuant to Title 82, chapter 11; or~~

~~(D) department of natural resources and conservation or the board of land commissioners pursuant to Titles 76, 77, 82, and 85; or~~

~~(ii) a project or activity involving the issuance of a permit, license, certificate, or other entitlement for permission to act by another agency acting in a regulatory capacity, either singly or in combination with other state agencies."~~

Section 5. Section 75-1-1001, MCA, is amended to read:

"75-1-1001. Penalty factors. (1) In determining the amount of an administrative or civil penalty to which subsection (4) applies, the department of environmental quality or the district court, as appropriate, shall take into account the following factors:

(a) the nature, extent, and gravity of the violation;

(b) the circumstances of the violation;

(c) the violator's prior history of any violation, which:

(i) must be a violation of a requirement under the authority of the same chapter and part as the

1 violation for which the penalty is being assessed;

2 (ii) must be documented in an administrative order or a judicial order or judgment issued within 3 years
3 prior to the date of the occurrence of the violation for which the penalty is being assessed; and

4 (iii) may not, at the time that the penalty is being assessed, be undergoing or subject to administrative
5 appeal or judicial review;

6 (d) the economic benefit or savings resulting from the violator's action;

7 (e) the violator's good faith and cooperation;

8 (f) the amounts voluntarily expended by the violator, beyond what is required by law or order, to
9 address or mitigate the violation or impacts of the violation; and

10 (g) other matters that justice may require.

11 (2) After the amount of a penalty is determined under subsection (1), the department of environmental
12 quality or the district court, as appropriate, may consider the violator's financial ability to pay the penalty and
13 may institute a payment schedule or suspend all or a portion of the penalty.

14 (3) The department of environmental quality may accept a supplemental environmental project as
15 mitigation for a portion of the penalty. For purposes of this section, a "supplemental environmental project" is an
16 environmentally beneficial project that a violator agrees to undertake in settlement of an enforcement action but
17 which the violator is not otherwise legally required to perform.

18 (4) This section applies to penalties assessed by the department of environmental quality or the
19 district court under Title 75, chapters 2, 5, 6, 8, 11, and 20; Title 75, chapter 10, parts 2, 4, 5, and 12; and Title
20 76, chapter 4.

21 (5) ~~The board of environmental review and the department of environmental quality may, for the~~
22 ~~statutes listed in subsection (4) for which each has rulemaking authority, adopt rules to implement this section."~~

23
24 **Section 12.** ~~Section 75-2-103, MCA, is amended to read:~~

25 ~~"75-2-103. Definitions. Unless the context requires otherwise, in this chapter, the following~~
26 ~~definitions apply:~~

27 (1) ~~"Air contaminant" means dust, fumes, mist, smoke, other particulate matter, vapor, gas, odorous~~
28 ~~substances, or any combination of those air contaminants.~~

~~(2) "Air pollutants" means one or more air contaminants that are present in the outdoor atmosphere, including those pollutants regulated pursuant to section 7412 and Subchapter V of the federal Clean Air Act, 42 U.S.C. 7401, et seq.~~

~~(3) "Air pollution" means the presence of air pollutants in a quantity and for a duration that are or tend to be injurious to human health or welfare, animal or plant life, or property or that would unreasonably interfere with the enjoyment of life, property, or the conduct of business.~~

~~(4) "Associated supporting infrastructure" means:~~

~~(a) electric transmission and distribution facilities;~~

~~(b) pipeline facilities;~~

~~(c) aboveground ponds and reservoirs and underground storage reservoirs;~~

~~(d) rail transportation;~~

~~(e) aqueducts and diversion dams;~~

~~(f) devices or equipment associated with the delivery of an energy form or product produced at an energy development project; or~~

~~(g) other supporting infrastructure, as defined by board department rule, that is necessary for an energy development project.~~

~~(5) "Board" means the board of environmental review provided for in 2-15-3502.~~

~~(6)(5) (a) "Commercial hazardous waste incinerator" means:~~

~~(i) an incinerator that burns hazardous waste; or~~

~~(ii) a boiler or industrial furnace subject to the provisions of 75-10-406.~~

~~(b) Commercial hazardous waste incinerator does not include a research and development facility that receives federal or state research funds and that burns hazardous waste primarily to test and evaluate waste treatment remediation technologies.~~

~~(7)(6) "Department" means the department of environmental quality provided for in 2-15-3501.~~

~~(8)(7) "Emission" means a release into the outdoor atmosphere of air contaminants.~~

~~(9)(8) (a) "Energy development project" means each plant, unit, or other development and associated developments, including any associated supporting infrastructure, designed for or capable of:~~

~~(i) generating electricity;~~

- 1 (ii) ~~producing gas derived from coal;~~
2 (iii) ~~producing liquid hydrocarbon products;~~
3 (iv) ~~refining crude oil or natural gas;~~
4 (v) ~~producing alcohol to be blended for ethanol-blended gasoline and that are eligible for a tax~~
5 ~~incentive pursuant to Title 15, chapter 70, part 5;~~
6 (vi) ~~producing biodiesel and that are eligible for a tax incentive for the production of biodiesel pursuant~~
7 ~~to 15-32-701; or~~
8 (vii) ~~transmitting electricity through an electric transmission line with a design capacity of equal to or~~
9 ~~greater than 50 kilovolts.~~
10 (b) ~~The term does not include a nuclear facility as defined in 75-20-1202.~~
11 ~~(10)(9) "Environmental protection law" means a law contained in or an administrative rule adopted~~
12 ~~pursuant to Title 75, chapter 2, 5, 10, or 11.~~
13 ~~(11)(10) "Hazardous waste" means:~~
14 (a) ~~a substance defined as hazardous under 75-10-403 or defined as hazardous in department~~
15 ~~administrative rules adopted pursuant to Title 75, chapter 10, part 4; or~~
16 (b) ~~a waste containing 2 parts or more per million of polychlorinated biphenyl (PCB).~~
17 ~~(12)(11) (a) "Incinerator" means any single or multiple chambered combustion device that burns~~
18 ~~combustible material, alone or with a supplemental fuel or with catalytic combustion assistance, primarily for the~~
19 ~~purpose of removal, destruction, disposal, or volume reduction of any portion of the input material.~~
20 (b) ~~Incinerator does not include:~~
21 (i) ~~safety flares used to combust or dispose of hazardous or toxic gases at industrial facilities, such as~~
22 ~~refineries, gas sweetening plants, oil and gas wells, sulfur recovery plants, or elemental phosphorus plants;~~
23 (ii) ~~space heaters that burn used oil;~~
24 (iii) ~~wood-fired boilers; or~~
25 (iv) ~~wood waste burners, such as tepee, wigwam, truncated cone, or silo burners.~~
26 ~~(13)(12) "Medical waste" means any waste that is generated in the diagnosis, treatment, or~~
27 ~~immunization of human beings or animals, in medical research on humans or animals, or in the production or~~
28 ~~testing of biologicals. The term includes:~~

1 ~~(a) — cultures and stocks of infectious agents;~~
2 ~~(b) — human pathological wastes;~~
3 ~~(c) — waste human blood or products of human blood;~~
4 ~~(d) — sharps;~~
5 ~~(e) — contaminated animal carcasses, body parts, and bedding that were known to have been exposed~~
6 ~~to infectious agents during research;~~
7 ~~(f) — laboratory wastes and wastes from autopsy or surgery that were in contact with infectious agents;~~
8 and
9 ~~(g) — biological waste and discarded material contaminated with blood, excretion, exudates, or~~
10 ~~secretions from humans or animals.~~

11 ~~(14)(13) (a) "Oil or gas well facility" means a well that produces oil or natural gas. The term includes:~~
12 ~~(i) — equipment associated with the well and used for the purpose of producing, treating, separating, or~~
13 ~~storing oil, natural gas, or other liquids produced by the well; and~~

14 ~~(ii) a group of wells under common ownership or control that produce oil or natural gas and that share~~
15 ~~common equipment used for the purpose of producing, treating, separating, or storing oil, natural gas, or other~~
16 ~~liquids produced by the wells.~~

17 ~~(b) — The equipment referred to in subsection (14)(a)(13)(a) includes but is not limited to wellhead~~
18 ~~assemblies, amine units, prime mover engines, phase separators, heater treater units, dehydrator units, tanks,~~
19 ~~and connecting tubing.~~

20 ~~(c) — The term does not include equipment such as compressor engines used for transmission of oil or~~
21 ~~natural gas.~~

22 ~~(15)(14) "Person" means an individual, a partnership, a firm, an association, a municipality, a public or~~
23 ~~private corporation, the state or a subdivision or agency of the state, a trust, an estate, an interstate body, the~~
24 ~~federal government or an agency of the federal government, or any other legal entity and includes persons~~
25 ~~resident in Canada.~~

26 ~~(16)(15) "Principal" means a principal of a corporation, including but not limited to a partner, associate,~~
27 ~~officer, parent corporation, or subsidiary corporation.~~

28 ~~(17)(16) "Small business stationary source" means a stationary source that:~~

- 1 ~~(a) is owned or operated by a person who employs 100 or fewer individuals;~~
- 2 ~~(b) is a small business concern as defined in the Small Business Act, 15 U.S.C. 631, et seq.;~~
- 3 ~~(c) is not a major stationary source as defined in Subchapter V of the federal Clean Air Act, 42 U.S.C.~~
- 4 ~~7661, et seq.;~~
- 5 ~~(d) emits less than 50 tons per year of an air pollutant;~~
- 6 ~~(e) emits less than a total of 75 tons per year of all air pollutants combined; and~~
- 7 ~~(f) is not excluded from this definition under 75-2-108(3).~~

8 ~~(18)(17) (a) "Solid waste" means all putrescible and nonputrescible solid, semisolid, liquid, or~~
 9 ~~gaseous wastes, including but not limited to garbage, rubbish, refuse, ashes, swill, food wastes, commercial or~~
 10 ~~industrial wastes, medical waste, sludge from sewage treatment plants, water supply treatment plants, or air~~
 11 ~~pollution control facilities, construction, demolition, or salvage wastes, dead animals, dead animal parts, offal,~~
 12 ~~animal droppings, or litter; discarded home and industrial appliances; automobile bodies, tires, interiors, or parts~~
 13 ~~thereof; wood products or wood byproducts and inert materials; styrofoam and other plastics; rubber materials;~~
 14 ~~asphalt shingles; tarpaper; electrical equipment, transformers, or insulated wire; oil or petroleum products or oil~~
 15 ~~or petroleum products and inert materials; treated lumber and timbers; and pathogenic or infectious waste.~~
 16 ~~(b) Solid waste does not include municipal sewage, industrial wastewater effluents, mining wastes~~
 17 ~~regulated under the mining and reclamation laws administered by the department of environmental quality, or~~
 18 ~~slash and forest debris regulated under laws administered by the department of natural resources and~~
 19 ~~conservation."~~

20
 21 **Section 13.** Section 75-2-104, MCA, is amended to read:

22 **~~"75-2-104. Limitations -- personal cause of action unabridged -- venue.~~** (1) This chapter may not
 23 be construed to:

- 24 ~~(a) grant to the board department any jurisdiction or authority with respect to air contamination~~
 25 ~~existing solely within commercial and industrial plants, works, or shops;~~
- 26 ~~(b) affect the relations between employers and employees with respect to or arising out of any~~
 27 ~~condition of air contamination or air pollution;~~
- 28 ~~(c) supersede or limit the applicability of any law or ordinance relating to sanitation, industrial health,~~

1 or safety; or

2 ~~(d) abridge, limit, impair, create, enlarge, or otherwise affect substantively or procedurally the right of~~
3 ~~a person to damages or other relief on account of injury to persons or property and to maintain an action or~~
4 ~~other appropriate proceeding.~~

5 ~~(2) A judicial challenge to a permit issued pursuant to this chapter by a party other than the permit~~
6 ~~applicant or permitholder must include the party to whom the permit was issued unless otherwise agreed to by~~
7 ~~the permit applicant or permitholder. All judicial challenges of permits for projects with a project cost, as~~
8 ~~determined by the court, of more than \$1 million must have precedence over any civil cause of a different~~
9 ~~nature pending in that court. If the court determines that the challenge was without merit or was for an improper~~
10 ~~purpose, such as to harass, to cause unnecessary delay, or to impose needless or increased cost in litigation,~~
11 ~~the court may award attorney fees and costs incurred in defending the action.~~

12 ~~(3) An action to challenge a permit decision pursuant to this chapter must be brought in the county in~~
13 ~~which the permitted activity will occur. If an activity will occur in more than one county, the action may be~~
14 ~~brought in any of the counties in which the activity will occur.~~

15 ~~(4) A judicial action or proceeding pursuant to this chapter for an equine slaughter or processing~~
16 ~~facility must comply with 81-9-240 and 81-9-241."~~

17
18 **Section 6.** Section 75-2-105, MCA, is amended to read:

19 **"75-2-105. Confidentiality of records.** (1) Records or other information concerning air pollutant
20 sources that are furnished to or obtained by the ~~board or~~ department are a matter of public record and open to
21 public use. However, any information unique to the owner or operator of an air pollutant source that would, if
22 disclosed, reveal methods or processes entitled to protection as trade secrets must be maintained as
23 confidential if so determined by a court of competent jurisdiction. The owner or operator shall file a declaratory
24 judgment action to establish the existence of a trade secret if the owner or operator wishes the information to
25 enjoy confidential status. The department must be served in the action and may intervene as a party in the
26 action. A trade secret not intended to be public when submitted to the ~~board or~~ department must be submitted
27 in writing and clearly marked as confidential. However, emission data and operating permits issued by the
28 department pursuant to 75-2-217 through 75-2-219 may not be considered confidential for the purposes of this

1 section.

2 (2) This section does not prevent the use of records or information by the ~~board or~~ department in
3 compiling or publishing analyses or summaries relating to the general condition of the outdoor atmosphere if
4 the analyses or summaries do not identify an owner or operator or reveal information otherwise made
5 confidential by this section."

6

7 **SECTION 7. SECTION 75-2-111, MCA, IS AMENDED TO READ:**

8 **"75-2-111. Powers of board.** The board shall, subject to the provisions of 75-2-207:

9 ~~(1) adopt, amend, and repeal rules for the administration, implementation, and enforcement of this~~
10 ~~chapter, for issuing orders under and in accordance with 42 U.S.C. 7419, and for fulfilling the requirements of~~
11 ~~42 U.S.C. 7420 and regulations adopted pursuant to that section, except that, for purposes other than~~
12 ~~agricultural open burning, the board may not adopt permitting requirements or any other rule relating to:~~

13 ~~(a) any agricultural activity or equipment that is associated with the use of agricultural land or the~~
14 ~~planting, production, processing, harvesting, or storage of agricultural crops by an agricultural producer and that~~
15 ~~is not subject to the requirements of 42 U.S.C. 7475, 7503, or 7661a;~~

16 ~~(b) a commercial operation relating to the activities or equipment referred to in subsection (1)(a) that~~
17 ~~remains in a single location for less than 12 months and is not subject to the requirements of 42 U.S.C. 7475,~~
18 ~~7503, or 7661a; or~~

19 ~~(c) forestry equipment and its associated engine used for forestry practices that remain in a single~~
20 ~~location for less than 12 months and are not subject to the requirements of 42 U.S.C. 7475, 7503, or 7661a;~~

21 ~~(2)~~(1) hold hearings relating to any aspect of or matter in the administration of this chapter at a place
22 designated by the board. The board may compel the attendance of witnesses and the production of evidence at
23 hearings. The board shall designate an attorney to assist in conducting hearings and shall appoint a reporter
24 who must be present at all hearings and take full stenographic notes of all proceedings, transcripts of which will
25 be available to the public at cost.

26 ~~(3)~~(2) issue orders necessary to effectuate the purposes of this chapter;

27 ~~(4) by rule require access to records relating to emissions;~~

28 ~~(5) by rule adopt a schedule of fees required for permits, permit applications, and registrations~~

consistent with this chapter;

~~(6)(3)~~ have the power to issue orders under and in accordance with 42 U.S.C. 7419."

Section 8. Section 75-2-112, MCA, is amended to read:

"75-2-112. Powers and responsibilities of department. (1) The department is responsible for the administration of this chapter.

(2) Subject to the provisions of 75-2-207, the department shall:

(a) adopt, amend, and repeal rules for the administration, implementation, and enforcement of this chapter, for issuing orders under and in accordance with 42 U.S.C. 7419, and for fulfilling the requirements of 42 U.S.C. 7420 and regulations adopted pursuant to that section, except that, for purposes other than agricultural open burning, the department may not adopt permitting requirements or any other rule relating to:

(i) any agricultural activity or equipment that is associated with the use of agricultural land or the planting, production, processing, harvesting, or storage of agricultural crops by an agricultural producer and that is not subject to the requirements of 42 U.S.C. 7475, 7503, or 7661a;

(ii) a commercial operation relating to the activities or equipment referred to in subsection (2)(a)(i) that remains in a single location for less than 12 months and is not subject to the requirements of 42 U.S.C. 7475, 7503, or 7661a; or

(iii) forestry equipment and its associated engine used for forestry practices that remain in a single location for less than 12 months and are not subject to the requirements of 42 U.S.C. 7475, 7503, or 7661a;

~~(b) hold hearings relating to any aspect of or matter in the administration of this chapter at a place designated by the department. The department may compel the attendance of witnesses and the production of evidence at hearings. The department shall designate an attorney to assist in conducting hearings and shall appoint a reporter who must be present at all hearings and take full stenographic notes of all proceedings, transcripts of which will be available to the public at cost.~~

~~(e)(B) issue orders necessary to effectuate the purposes of this chapter;~~

~~(d)(C) by rule require access to records relating to emissions; AND~~

~~(e)(D) by rule adopt a schedule of fees required for permits, permit applications, and registrations consistent with this chapter;~~

1 ~~(f) have the power to issue orders under and in accordance with 42 U.S.C. 7419.~~

2 ~~(2)(3)~~ The department shall:

3 (a) by appropriate administrative and judicial proceedings, enforce orders issued by the department or
4 the former board of environmental review;

5 (b) secure necessary scientific, technical, administrative, and operational services, including
6 laboratory facilities, by contract or otherwise;

7 (c) prepare and develop a comprehensive plan for the prevention, abatement, and control of air
8 pollution in this state;

9 (d) encourage voluntary cooperation by persons and affected groups to achieve the purposes of this
10 chapter;

11 (e) encourage local units of government to handle air pollution problems within their respective
12 jurisdictions on a cooperative basis and provide technical and consultative assistance for this. If local programs
13 are financed with public funds, the department may contract with the local government to share the cost of the
14 program. However, the state share may not exceed 30% of the total cost.

15 (f) encourage and conduct studies, investigations, and research relating to air contamination and air
16 pollution and their causes, effects, prevention, abatement, and control;

17 (g) determine, by means of field studies and sampling, the degree of air contamination and air
18 pollution in the state;

19 (h) make a continuing study of the effects of the emission of air contaminants from motor vehicles on
20 the quality of the outdoor atmosphere of this state and make recommendations to appropriate public and
21 private bodies with respect to this;

22 (i) collect and disseminate information and conduct educational and training programs relating to air
23 contamination and air pollution;

24 (j) advise, consult, contract, and cooperate with other agencies of the state, local governments,
25 industries, other states, interstate and interlocal agencies, the United States, and any interested persons or
26 groups;

27 (k) consult, on request, with any person proposing to construct, install, or otherwise acquire an air
28 contaminant source or device or system for the control thereof concerning the efficacy of this device or system

or the air pollution problems which may be related to the source, device, or system. Nothing in this consultation relieves a person from compliance with this chapter, rules in force under it, or any other provision of law.

(l) accept, receive, and administer grants or other funds or gifts from public or private agencies, including the United States, for the purpose of carrying out this chapter. Funds received under this section shall be deposited in the state treasury to the account of the department.

~~(3)(4)~~ The department may assess fees to the applicant for the analysis of the environmental impact of an application to redesignate the classification of any area, except those areas within the exterior boundaries of a reservation of a federally recognized Indian tribe, under the classifications established by 42 U.S.C. 7470 through 7479 (prevention of significant deterioration of air quality). The determination of whether or not a fee will be assessed is to be on a case-by-case basis."

Section 9. Section 75-2-201, MCA, is amended to read:

"75-2-201. Classifying and reporting air contaminant sources. (1) The ~~board~~department may classify air contaminant sources ~~which that~~ in its judgment may cause or contribute to air pollution according to levels and types of emissions and other characteristics ~~which that~~ relate to air pollution and may require reporting for any such class or classes. ~~Such~~The classifications ~~shall~~must be made with special reference to effects on health, economic and social factors, and physical effects on property and may be applied to the state as a whole or to any designated area.

(2) Any person operating or responsible for the operation of air contaminant sources of any class for which the rules of the ~~board~~department may require reporting shall make reports containing ~~such any~~ information as may be required concerning location, size and height of contaminant outlets, processes employed, fuels used, and the nature and time periods or duration of emissions and any other matter relevant to air pollution ~~which that~~ is available or reasonably capable of being assembled."

Section 10. Section 75-2-202, MCA, is amended to read:

"75-2-202. ~~Board~~Department to set ambient air quality standards. (1) The ~~board~~department shall establish ambient air quality standards for the state.

(2) Ambient air quality standards for fluorides ~~shall~~MUST be established through limitations upon the

1 concentration of fluorides in forage grasses, hay, and silage."

2

3 **Section 11.** Section 75-2-203, MCA, is amended to read:

4 **"75-2-203. ~~Board~~ Department to set emission levels.** (1) The ~~board~~ department may establish the
5 limitations of the levels, concentrations, or quantities of emissions of various pollutants from any source
6 necessary to prevent, abate, or control air pollution. Except as otherwise provided in or pursuant to this section,
7 ~~such those~~ levels, concentrations, or quantities ~~shall be~~ are controlling, and no emission in excess ~~there of~~ shall
8 ~~be of those levels is~~ lawful.

9 (2) In any area where the concentration of air pollution sources or of population or where the nature of
10 the economy or of land and its uses ~~so may~~ require, the ~~board~~ department may fix more stringent requirements
11 governing the emission of air pollutants than those in effect pursuant to subsection (1) ~~of this section~~.

12 (3) The ~~board~~ department may by rule use any widely recognized measuring system for measuring
13 emission of air contaminants.

14 (4) Should federal minimum standards of air pollution be set by federal law, the ~~board~~ department
15 may, if necessary in some localities of this state, set more stringent standards by rule."

16

17 **Section 12.** Section 75-2-204, MCA, is amended to read:

18 **"75-2-204. Rules relating to construction, installation, alteration, operation, or use.** The ~~board~~
19 department may by rule prohibit the construction, installation, alteration, operation, or use of a machine,
20 equipment, device, or facility that it finds may directly or indirectly cause or contribute to air pollution or that is
21 intended primarily to prevent or control the emission of air pollutants, unless the owner or operator ~~has obtained~~
22 OBTAINS a permit under this part or has registered the source of air contaminants with the department if the
23 source is in a category for which only registration is required by the rules adopted to implement this part."

24

25 **Section 13.** Section 75-2-206, MCA, is amended to read:

26 **"75-2-206. Study of effects of sulfur dioxide on health and environment.** (1) To the extent that
27 funds are available, the ~~board~~ department shall conduct an ongoing study in areas of Montana where there are
28 major industrial sources of sulfur dioxide. The study MUST ~~shall~~ concentrate on the effects on human health and

1 the environment of ambient sulfur dioxide concentrations separately and in conjunction with particulates.

2 (2) Notwithstanding other funding sources to pay for the study, the ~~board~~ department may accept
3 funds and grants from private and public sources."
4

5 **Section 14.** Section 75-2-207, MCA, is amended to read:

6 **"75-2-207. State regulations no more stringent than federal regulations or guidelines --**
7 **exceptions -- procedure.** (1) After April 14, 1995, except as provided in subsections (2) and (3) or unless
8 required by state law, the ~~board or~~ department may not adopt a rule to implement this chapter that is more
9 stringent than the comparable federal regulations or guidelines that address the same circumstances. The
10 ~~board or~~ department may incorporate by reference comparable federal regulations or guidelines.

11 (2) (a) The ~~board or~~ department may adopt a rule to implement this chapter that is more stringent
12 than comparable federal regulations or guidelines only if:

13 (i) a public hearing is held;

14 (ii) public comment is allowed; and

15 (iii) the ~~board or the~~ department makes a written finding after the public hearing and comment period
16 that is based on evidence in the record that the proposed standard or requirement:

17 (A) protects public health or the environment;

18 (B) can mitigate harm to the public health or the environment; and

19 (C) is achievable with current technology.

20 (b) The written finding required under subsection (2)(a)(iii) must reference information and peer-
21 reviewed scientific studies contained in the record that form the basis for the ~~board's or the~~ department's
22 conclusion. The written finding must also include information from the hearing record regarding costs to the
23 regulated community that are directly attributable to the proposed standard or requirement.

24 (c) (i) A person or entity affected by a rule of the ~~board or~~ department adopted after January 1, 1990,
25 and before April 14, 1995, that the person or entity believes is more stringent than comparable federal
26 regulations or guidelines may petition the ~~board or~~ department to review the rule.

27 (ii) If the ~~board or~~ department determines that the rule is more stringent than comparable federal
28 regulations or guidelines, the ~~board or~~ department shall either revise the rule to conform to the federal

1 regulations or guidelines or follow the process provided in subsections (2)(a) and (2)(b) within a reasonable
2 period of time, not to exceed 6 months after receiving the petition.

3 (iii) A petition under this section does not relieve the petitioner of the duty to comply with the
4 challenged rule. The ~~board or~~ department may charge a petition filing fee in an amount not to exceed \$250.

5 (iv) A person may also petition the ~~board or~~ department for a rule review under subsection (2)(a) if the
6 ~~board or~~ department adopts a rule after January 1, 1990, in an area in which no federal regulations or
7 guidelines existed and the federal government subsequently establishes comparable regulations or guidelines
8 that are less stringent than the previously adopted ~~board or~~ department rule.

9 (3) This section does not apply to a rule adopted under the emergency rulemaking provisions of 2-4-
10 303(1)."

11
12 **Section 15.** Section 75-2-211, MCA, is amended to read:

13 **"75-2-211. Permits for construction, installation, alteration, or use.** (1) The ~~board~~ department
14 shall by rule provide for the issuance, modification, suspension, revocation, and renewal of a permit issued
15 under this part.

16 (2) (a) Except as provided in 75-1-208(4)(b), 75-2-234, and subsections (2)(b) and (2)(c) of this
17 section, not later than 180 days before construction, installation, or alteration begins or as a condition of use of
18 any machine, equipment, device, or facility that the ~~board~~ department finds may directly or indirectly cause or
19 contribute to air pollution or that is intended primarily to prevent or control the emission of air pollutants, the
20 owner or operator shall file with the department the appropriate permit application on forms available from the
21 department.

22 (b) Except as provided in subsection (2)(e), the owner or operator of an oil or gas well facility shall file
23 the permit application with the department no later than January 3, 2006, or 60 days after the initial well
24 completion date, whichever is later. For purposes of this section, the initial well completion date for an oil or gas
25 well facility is:

26 (i) for an oil or gas well facility producing oil, the date when the first oil is produced through wellhead
27 equipment into lease tanks from the ultimate producing interval after casing has been run; and

28 (ii) for an oil or gas well facility producing gas, the date when the oil or gas well facility is capable of

1 producing gas through wellhead equipment from the ultimate producing interval after casing has been run.

2 (c) An owner or operator who complies with subsection (2)(b) may construct, install, or use equipment
3 necessary to complete or operate an oil or gas well facility without a permit until the department's decision on
4 the application is final. If the owner or operator does not comply with subsection (2)(b), the owner or operator
5 may not operate the oil or gas well facility and is liable for a violation of this section for every day of
6 construction, installation, or operation of the facility.

7 (d) The ~~board~~department shall adopt rules establishing air emission control requirements applicable
8 to an oil or gas well facility during the time from the initial well completion date until the department's decision
9 on the application is final.

10 (e) The provisions of subsections (2)(b) and (2)(c) do not apply to an oil or gas well facility subject to
11 the federal air permitting provisions of 42 U.S.C. 7475 or 7503.

12 (3) The permit program administered by the department pursuant to this section must include the
13 following:

14 (a) requirements and procedures for permit applications, including standard application forms;

15 (b) requirements and procedures for submittal of information necessary to determine the location,
16 quantity, and type of emissions;

17 (c) procedures for public notice and opportunity for comment or public hearing, as appropriate;

18 (d) procedures for providing notice and an opportunity for comment to contiguous states and federal
19 agencies, as appropriate;

20 (e) requirements for inspection, monitoring, recordkeeping, and reporting;

21 (f) procedures for the transfer of permits;

22 (g) requirements and procedures for suspension, modification, and revocation of permits by the
23 department;

24 (h) requirements and procedures for appropriate emission limitations and other requirements,
25 including enforceable measures necessary to ensure compliance with those limitations and requirements;

26 (i) requirements and procedures for permit modification and amendment; and

27 (j) requirements and procedures for issuing a single permit authorizing emissions from similar
28 operations at multiple temporary locations, which permit may include conditions necessary to ensure

1 compliance with the requirements of this chapter at all authorized locations and a requirement that the owner or
2 operator notify the department in advance of each change in location.

3 (4) This section does not restrict the ~~board's~~ department's authority to adopt regulations providing for
4 a single air quality permit system.

5 (5) Department approval of an application to transfer a portable emission source from one location to
6 another is exempt from the provisions of 75-1-201(1).

7 (6) The department may, for good cause shown, waive or shorten the time required for filing the
8 appropriate applications.

9 (7) The department shall require that applications for permits be accompanied by any plans,
10 specifications, and other information that it considers necessary.

11 (8) An application is not considered filed until the applicant has submitted all fees required under 75-
12 2-220 and all information and completed application forms required pursuant to subsections (2), (3), and (7) of
13 this section. If the department fails to notify the applicant in writing within 30 days after the purported filing of an
14 application that the application is incomplete and fails to list the reasons why the application is considered
15 incomplete, the application is considered filed as of the date of the purported filing.

16 (9) (a) Except as provided in 75-1-205(4) and 75-1-208(4)(b), if an application for a permit requires
17 the preparation of an environmental impact statement under the Montana Environmental Policy Act, Title 75,
18 chapter 1, parts 1 through 3, the department shall notify the applicant in writing of the approval or denial of the
19 application:

20 (i) within 180 days after the department's receipt of a filed application, as provided in subsection (8), if
21 the department prepares the environmental impact statement;

22 (ii) within 30 days after issuance of the final environmental impact statement by the lead agency if a
23 state agency other than the department has been designated by the governor as lead agency for preparation of
24 the environmental impact statement; or

25 (iii) if the application is for a machine, equipment, a device, or a facility at an operation that requires a
26 permit under Title 82, chapter 4, part 1, 2, or 3, within 30 days of issuance of the final environmental impact
27 statement in accordance with time requirements of Title 82, chapter 4, part 1, 2, or 3.

28 (b) If an application does not require the preparation of an environmental impact statement, is not

1 subject to the provisions of 75-2-215, and is not subject to the federal air quality permitting provisions of 42
2 U.S.C. 7475, 7503, or 7661a, the department shall notify the applicant in writing within 60 days after its receipt
3 of a filed application, as provided in subsection (8), of its approval or denial of the application, except as
4 provided in subsection (14).

5 (c) If an application does not require the preparation of an environmental impact statement and is
6 subject to the federal air permitting provisions of 42 U.S.C. 7475, 7503, or 7661a, the department shall notify
7 the applicant, in writing, within 75 days after its receipt of a filed application, as provided in subsection (8), of its
8 approval or denial of the application.

9 (d) Except as provided in subsection (9)(e), if an application does not require the preparation of an
10 environmental impact statement and is subject to the provisions of 75-2-215, the department shall notify the
11 applicant of its approval or denial of the application, in writing, within 75 days after its receipt of a filed
12 application, as provided in subsection (8).

13 (e) If an application for a permit is for the construction, installation, alteration, or use of a source that
14 is also required to obtain a license pursuant to 75-10-221 or a permit pursuant to 75-10-406, the department
15 shall prepare a single environmental review document pursuant to Title 75, chapter 1, for the permit required
16 under this section and the license or permit required under 75-10-221 or 75-10-406 and act on the applications
17 within the time period provided for in 75-2-215(3)(e).

18 (f) The time for notification may be extended for 30 days by written agreement of the department and
19 the applicant. Additional 30-day extensions may be granted by the department upon the request of the
20 applicant. Notification of approval or denial may be served personally or by certified mail on the applicant or the
21 applicant's agent.

22 (g) Failure by the department to act in a timely manner does not constitute approval or denial of the
23 application. This does not limit or abridge the right of any person to seek available judicial remedies to require
24 the department to act in a timely manner.

25 (10) Except as provided in 75-2-213, when the department approves or denies the application for a
26 permit under this section, a person who is directly and adversely affected by the department's decision may
27 request a hearing before the ~~board~~ department ~~BOARD~~. The request for hearing must be filed within 15 days
28 after the department renders its decision. An affidavit setting forth the grounds for the request must be filed

1 within 30 days after the department renders its decision. The contested case provisions of the Montana
2 Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing before the ~~board~~ department BOARD
3 under this subsection.

4 (11) Except as provided in 75-2-213:

5 (a) the department's decision on the application is not final until 15 days have elapsed from the date
6 of the decision;

7 (b) the filing of a request for hearing does not stay the department's decision. However, the ~~board~~
8 department BOARD may order a stay upon receipt of a petition and a finding, after notice and opportunity for
9 hearing, that:

10 (i) the person requesting the stay is entitled to the relief demanded in the request for a hearing; or

11 (ii) continuation of the permit during the appeal would produce great or irreparable injury to the person
12 requesting the stay.

13 (c) upon granting a stay, the ~~board~~ department BOARD may require a written undertaking to be given
14 by the party requesting the stay for the payment of costs and damages incurred by the permit applicant and its
15 employees if the ~~board~~ department BOARD determines that the permit was properly issued. When requiring an
16 undertaking, the ~~board~~ department BOARD shall use the same procedures and limitations as are provided in 27-
17 19-306(2) through (4) for undertakings on injunctions.

18 (12) The ~~board~~ department shall provide, by rule, a period of 30 days in which the public may submit
19 comments on draft air quality permits for applications that:

20 (a) are subject to the federal air quality permitting provisions of 42 U.S.C. 7475, 7503, or 7661a;

21 (b) are subject to the requirements of 75-2-215; or

22 (c) require the preparation of an environmental impact statement.

23 (13) The ~~board~~ department shall provide, by rule, a period of 15 days in which the public may submit
24 comments on draft air quality permits not subject to subsection (12).

25 (14) The ~~board~~ department shall provide, by rule, the basis upon which the department may extend by
26 15 days:

27 (a) the period as provided in subsection (13) in which the public may submit comments on draft air
28 quality permits not subject to subsection (12); and

(b) the period for notifying an applicant of its final decision on approval or denial of an application, as provided in subsection (9)(b).

(15) (a) The ~~board~~department may adopt rules for issuance, modification, suspension, revocation, renewal, or creation of:

(i) general permits covering multiple similar sources; or

(ii) other permits covering multiple similar sources.

(b) Rules adopted pursuant to subsection (15)(a) may provide for construction and operation under the permit upon authorization by the department or upon notice to the department."

Section 16. Section 75-2-212, MCA, is amended to read:

"75-2-212. Variances -- renewals -- filing fees. (1) A person who owns or is in control of a plant, building, structure, process, or equipment may apply to the ~~board~~department for an exemption or partial exemption from rules governing the quality, nature, duration, or extent of emissions of air pollutants. The application must be accompanied by information and data that the ~~board~~department may require. The ~~board~~department may grant an exemption or partial exemption if it finds that:

(a) the emissions occurring or proposed to occur do not constitute a danger to public health or safety; and

(b) compliance with the rules from which an exemption is sought would produce hardship without equal or greater benefits to the public.

(2) An exemption or partial exemption may not be granted pursuant to this section except after public hearing on due notice and until the ~~board~~department has considered the relative interests of the applicant, other owners or property likely to be affected by the emissions, and the general public.

(3) The exemption or partial exemption may be renewed if a complaint is not made to the ~~board~~department because of it or if, after the complaint has been made and duly considered at a public hearing held by the ~~board~~department on due notice, the ~~board~~department finds that renewal is justified. A renewal may not be granted except on application. An application must be made at least 60 days before the expiration of the exemption or partial exemption. Immediately before application for renewal, the applicant shall give public notice of the application in accordance with rules of the ~~board~~department. A renewal pursuant to this

subsection must be on the same grounds and subject to the same limitations and requirements as provided in subsection (1).

(4) An exemption, partial exemption, or renewal is not a right of the applicant or holder but may be granted at the discretion of the ~~board~~ department. However, a person adversely affected by an exemption, partial exemption, or renewal granted by the ~~board~~ department may obtain judicial review as provided by 75-2-411.

(5) This section and an exemption, partial exemption, or renewal granted pursuant to this section may not be construed to prevent or limit the application of the emergency provisions and procedures of 75-2-402 to a person or the person's property.

(6) A person who owns or is in control of a plant, building, structure, process, or equipment, which are called facilities, who applies to the ~~board~~ department for an exemption or partial exemption or a renewal of an exemption or partial exemption from a rule governing the quality, nature, duration, or extent of emissions of air pollutants shall submit with the application for variance a sum of not less than \$500 or 2% of the cost of the equipment to bring the facility into compliance with the rule for which a variance is sought, whichever is greater, but not to exceed \$80,000. The department shall prepare a statement of actual costs, and funds in excess of this must be returned to the applicant. The person requesting the variance shall describe the facility in sufficient detail, with accompanying estimates of cost and verifying materials, to permit the department to determine with reasonable accuracy the sum of the fee. For a renewal of an exemption or partial exemption, if a public hearing, environmental impact statement, or appreciable investigation by the department is not necessary, the minimum filing fee applies or the fee may be waived by the department. The filing fee must be deposited in the state special revenue fund provided for in 17-2-102. It is the intent of the legislature that the revenue derived from the filing fees must be used by the department to:

- (a) compile the information required for rendering a decision on the request;
- (b) compile the information necessary for any environmental impact statements;
- (c) offset the costs of a public hearing, printing, or mailing; and
- (d) carry out its other responsibilities under this chapter."

Section 24. ~~Section 75-2-213, MCA, is amended to read:~~

1 ~~"75-2-213. Energy development project -- hearing and procedures. (1) (a) When the department~~
2 ~~approves or denies the application for a permit under 75-2-211 for an energy development project, the applicant~~
3 ~~or a person who has provided the department with formal comments and who is directly and adversely affected~~
4 ~~by the department's decision may request a hearing before the board department. If the department provided~~
5 ~~an opportunity for public comment on the application, the request for a hearing must be limited to those issues~~
6 ~~raised in comments made to the department during the comment period unless the issues are related to a~~
7 ~~material change in federal or state law made during the comment period, to a judicial decision issued after the~~
8 ~~comment period, or to a material change to the draft permit, which was submitted for public comment, made by~~
9 ~~the department in the final permit decision and upon which the public did not have a meaningful opportunity to~~
10 ~~comment. The request for hearing must be filed within 30 days after the department renders its decision. An~~
11 ~~affidavit setting forth the grounds for the request must be filed with the request for a hearing.~~

12 ~~(b) (i) If a hearing is requested by a person other than the applicant for or permittee of an energy~~
13 ~~development project, the applicant or permittee may, by filing a written election with the board department~~
14 ~~within 15 days of receipt of the request for hearing, elect to have the matter proceed to hearing before the~~
15 ~~board department or to have the matter submitted directly to the district court for judicial review of the agency~~
16 ~~decision. The party who requests the hearing may elect to have the matter submitted either to the board~~
17 ~~department for a hearing or to the district court for judicial review by submitting a written election to the board~~
18 ~~department with the request for hearing. If there are conflicting elections between the parties, the matter must~~
19 ~~proceed to district court.~~

20 ~~If the applicant or permittee is not the person who requested the hearing and has elected to have the~~
21 ~~matter submitted to the district court, the person who submitted the request for a hearing shall file a petition for~~
22 ~~review of the permit decision within 15 days of receipt of notice from the permittee. If the person who requested~~
23 ~~the hearing has elected to have the matter proceed to district court, that person shall file a petition in district~~
24 ~~court within 15 days of filing the request.~~

25 ~~(iii) The petition must be limited to matters raised in the request for hearing and must be filed in the~~
26 ~~county in which the facility is located.~~

27 ~~(iv) If a party does not elect to submit the matter directly to district court, the matter must proceed~~
28 ~~through the contested case process before the board department pursuant to the Montana Administrative~~

1 Procedure Act.

2 ~~—The board department or the district court shall apply the laws and rules in place when the~~
3 ~~department issued its decision, and the board department or the district court may not consider any issue that~~
4 ~~was not presented to the department for the department's consideration during the formal comment period~~
5 ~~unless the issue is related to a material change in federal or state law made during the comment period, to a~~
6 ~~judicial decision issued after the comment period, or to a material change to the draft permit, which was~~
7 ~~submitted for public comment, made by the department in the final permit decision and upon which the public~~
8 ~~did not have a meaningful opportunity to comment.~~

9 ~~(c) (i) Except as provided in subsection (1)(c)(ii), if the person requesting the hearing is not the~~
10 ~~applicant or permittee of an energy development project, the board department or the district court shall require~~
11 ~~a written undertaking to be given by the party requesting the hearing for the payment of costs and damages~~
12 ~~incurred by the permit applicant and its employees if the request for a hearing or judicial review was for an~~
13 ~~improper purpose designed to harass, cause unnecessary delay, or improperly interfere with the issuance of~~
14 ~~the permit without a reasonable basis in law or fact.~~

15 ~~(ii) The board department or the district court may not require a written undertaking if the party~~
16 ~~requesting the hearing is an indigent person.~~

17 ~~(d) If grounds for requesting the hearing are based on alleged error in applying best available control~~
18 ~~technology requirements, the board department or the district court shall give deference to the best available~~
19 ~~control technology determination made by the department. The board department or the district court may not~~
20 ~~reject the best available control technology determination unless the determination was incorrect as a matter of~~
21 ~~law or the factual basis for the determination was clearly erroneous.~~

22 ~~(2) The board department shall issue a final decision within 4 months from the close of the hearing~~
23 ~~on the merits or, if no hearing is held, within 3 months from the date that briefing by the parties is complete~~
24 ~~unless the applicant or permittee and the party other than the applicant or permittee agree in writing to an~~
25 ~~extension of time. The board department shall require the parties to prepare the case for hearing without~~
26 ~~unreasonable delay.~~

27 ~~(3) (a) Any requirement in a permit to commence construction, installation, or alteration within a~~
28 ~~certain time period is tolled during a contested case or judicial review proceeding, but not by more than 12~~

1 months, unless the applicant or permittee in its discretion waives the tolling in writing.

2 (b) ~~If there are multiple appeals of one permit, tolling under this subsection (3) may not exceed a total~~
3 ~~of 12 months for all appeals.~~

4 (c) ~~The applicant may not engage in construction during the period that the time period is tolled under~~
5 ~~subsection (3)(a).~~

6 (4) ~~The department shall, for good cause shown, waive for up to 1 year any requirement that~~
7 ~~construction of an energy development project must proceed with due diligence. During the period that a waiver~~
8 ~~is in effect, an air quality permit does not expire because construction of an energy development project failed~~
9 ~~to proceed with due diligence."~~

10

11 **Section 17.** Section 75-2-215, MCA, is amended to read:

12 **"75-2-215. Solid or hazardous waste incineration -- additional permit requirements.** (1) Until the
13 department ~~has issued~~ ISSUES an air quality permit pursuant to 75-2-211 that includes the conditions required
14 by this section, a person may not construct, install, alter, or use a solid or hazardous waste incinerator or a
15 boiler or industrial furnace subject to the provisions of 75-10-406, except as provided in subsection (2).

16 (2) An existing or permitted solid or hazardous waste incinerator or a boiler or industrial furnace
17 subject to the provisions of 75-10-406 is subject to the provisions of subsection (1) only if it incinerates or uses
18 as fuel or would incinerate or use as fuel solid or hazardous waste in an amount, form, kind, or content that
19 changes the nature, character, or composition of its emissions from its design or permitted operation.

20 (3) The department may not issue a permit to a facility described in subsection (1) until:

21 (a) the owner or operator ~~has provided~~ PROVIDES to the department's satisfaction:

22 (i) a characterization of emissions and ambient concentrations of air pollutants, including hazardous
23 air pollutants, from any existing emission source at the facility; and

24 (ii) an estimate of emissions and ambient concentrations of air pollutants, including hazardous air
25 pollutants, from the incineration of solid or hazardous waste or the use of hazardous waste as fuel for a boiler
26 or industrial furnace, as proposed in the permit application or modification;

27 (b) if a license is required pursuant to 75-10-221 or a permit is required pursuant to 75-10-406, the
28 applicant has published, in the county where the project is proposed, at least three notices, in accordance with

1 the procedures identified in 7-1-4127, describing the proposed project;

2 (c) if a license is required pursuant to 75-10-221 or a permit is required pursuant to 75-10-406, the
3 department has conducted a public hearing on an environmental review prepared pursuant to Title 75, chapter
4 1, and, as appropriate, provided additional opportunities for the public to review and comment on the permit
5 application or modification;

6 (d) the department ~~has reached~~ REACHES a determination that the projected emissions and ambient
7 concentrations will constitute a negligible risk to the public health, safety, and welfare and to the environment;
8 and

9 (e) the department ~~has issued~~ ISSUES a license pursuant to 75-10-221 or a permit pursuant to 75-10-
10 406, if a license or permit is required. The decision to issue, deny, or alter a permit pursuant to 75-2-211 and
11 this section must be made within 30 days from when the department issues a license pursuant to 75-10-221 or
12 a permit pursuant to 75-10-406 or within 90 days after the receipt of a complete application for a permit or a
13 permit alteration under 75-2-211 and this section, whichever is later.

14 (4) The department shall require the application of air pollution control equipment, engineering, or
15 other operating procedures as necessary to provide reductions of air pollutants, including hazardous air
16 pollutants, equivalent to or more stringent than those achieved through the best available control technology.

17 (5) The ~~board~~ department may by rule provide for general air quality permits under the provisions of
18 75-2-211 and this section. The rules must cover numerous similar classes or categories of incinerators and
19 boilers or industrial furnaces.

20 (6) This section does not relieve an owner or operator of a solid or hazardous waste incinerator or a
21 boiler or industrial furnace that is not included under subsection (1) from the obligation to obtain any permit
22 otherwise required under this chapter or rules implementing this chapter."
23

24 **Section 18.** Section 75-2-217, MCA, is amended to read:

25 **"75-2-217. Operating permit program -- exemptions -- general requirements -- duration.** (1) The
26 ~~board~~ department shall provide by rule for the issuance, expiration, modification, amendment, suspension,
27 revocation, and renewal of operating permits as part of an operating permit program to be administered by the
28 department under this chapter. The ~~board~~ department shall promulgate rules that are consistent with the

1 operating permit framework and guidelines outlined in Subchapter V of the federal Clean Air Act and
2 implementing regulations.

3 (2) This section applies to all sources of air pollutants that are subject to the provisions of Subchapter
4 V of the federal Clean Air Act, 42 U.S.C. 7661, et seq.

5 (3) A person may not violate any requirement of an operating permit issued under 75-2-218 and this
6 section or operate any source required to have a permit under this section without having complied with the
7 requirements of the operating permit program administered by the department pursuant to 75-2-218, 75-2-219,
8 and this section.

9 (4) The ~~board~~department may by rule provide for the exemption of one or more source categories, in
10 whole or in part, from all or part of the requirements of this section if the ~~board~~department determines that
11 compliance with the requirements of this section is impracticable, infeasible, or unnecessarily burdensome for
12 the sources. The ~~board~~department may premise this determination upon a similar determination by the
13 appropriate federal agency acting pursuant to the federal Clean Air Act, 42 U.S.C. 7401, et seq.

14 (5) The ~~board~~department may by rule provide for general operating permits covering numerous
15 similar sources.

16 (6) An operating permit issued by the department under 75-2-218 and this section is effective for a
17 period not to exceed 5 years and may be renewed.

18 (7) The operating permit program administered by the department pursuant to this section must
19 include the following:

20 (a) adequate procedures that are streamlined and reasonable for:

21 (i) expeditiously determining when applications are complete;

22 (ii) processing applications; and

23 (iii) expeditiously reviewing permit actions, including application renewals or revisions;

24 (b) requirements and procedures for submittal of information necessary to determine the location,
25 quantity, and type of emissions;

26 (c) procedures for public notice and opportunity for comment or public hearing, as appropriate;

27 (d) procedures for providing notice and an opportunity for comment to contiguous states and federal
28 agencies, as appropriate;

- 1 (e) requirements for inspection, monitoring, recordkeeping, compliance certification, and reporting;
- 2 (f) deadlines for submitting permit applications and compliance plans that are not later than 12
- 3 months after the source becomes subject to the operating permit requirement;
- 4 (g) deadlines for submitting permit renewal applications that are not later than 6 months before
- 5 expiration of the existing operating permit;
- 6 (h) requirements for compliance plans that must be submitted with permit and renewal applications,
- 7 including schedules of compliance and progress reports;
- 8 (i) requirements and procedures for periodic certification of source compliance with permit
- 9 requirements, including the prompt reporting of any deviations from permit requirements;
- 10 (j) requirements for submission of any plans, specifications, or other information that the department
- 11 considers necessary under this section;
- 12 (k) conditions and procedures for the transfer of operating permits;
- 13 (l) requirements and procedures for suspension, modification, amendment, and revocation of permits
- 14 by the department for cause, including the modification or amendment of permits before renewal or termination
- 15 to incorporate applicable limitations or requirements effective after permit issuance;
- 16 (m) requirements and procedures for incorporating into permits and permit renewals all applicable
- 17 emission limitations and other requirements, including enforceable measures necessary to ensure compliance
- 18 with those limitations and requirements;
- 19 (n) requirements and procedures for permit modification and amendment;
- 20 (o) procedures for tracking activities conducted under general permits;
- 21 (p) requirements and procedures for issuing a single operating permit authorizing emissions from
- 22 similar operations at multiple temporary locations, which permit may include conditions necessary to ensure
- 23 compliance with the requirements of this chapter at all authorized locations and a requirement that the owner or
- 24 operator notify the department in advance of each change in location;
- 25 (q) requirements and procedures for allowing changes within a permitted facility without requiring a
- 26 permit amendment if the changes are not prohibited under this chapter and do not exceed the emissions
- 27 allowable under the permit; and
- 28 (r) other requirements necessary for the department to obtain the authorization to administer an

1 operating permit program under the provisions of Subchapter V of the federal Clean Air Act."

2

3 **Section 19.** Section 75-2-218, MCA, is amended to read:

4 **"75-2-218. Permits for operation -- application completeness -- action by department --**

5 **application shield -- review by ~~board~~ department ~~BOARD~~.** (1) An application for an operating permit or
6 renewal is not considered filed until the department has determined that it is complete. An application is
7 complete if all fees required under 75-2-220 and all information and completed application forms required under
8 75-2-217 have been submitted. A complete application must contain all ~~of~~ the information required for the
9 department to begin processing the application. If the department fails to notify the applicant in writing within 60
10 days after submittal of an application that the application is incomplete and fails to list the reasons why the
11 application is considered incomplete, the application is considered filed on the date of the department's receipt
12 of the application. The department may request additional information after a completeness determination has
13 been made. The ~~board~~ department shall adopt rules that contain criteria for use in determining both when an
14 application is complete and when additional information is required after a completeness determination has
15 been made.

16 (2) Except as provided in 75-1-208(4)(b) and subsection (3) of this section, the department shall,
17 consistent with the procedures established under 75-2-217, approve or disapprove a complete application for
18 an operating permit or renewal and shall issue or deny the permit or renewal within 18 months after the date of
19 filing. Failure of the department to act in a timely manner does not constitute approval or denial of the
20 application. This does not limit or abridge the right of any person to seek available judicial remedies to require
21 the department to act in a timely manner.

22 (3) The ~~board~~ department may by rule provide for a transition schedule for both the submittal to the
23 department of initial applications for operating permits by existing sources and action by the department on
24 these initial permit applications. The ~~board~~ department may require that one-third of all operating permit
25 applications required for existing sources be submitted within the first calendar year after the adoption of rules
26 implementing an operating permit program under 75-2-217.

27 (4) If an applicant submits a timely and complete application for an operating permit, the applicant's
28 failure to hold a valid operating permit is not a violation of 75-2-217. If an applicant submits a timely and

complete application for an operating permit renewal, the expiration of the applicant's existing operating permit is not a violation of 75-2-217. The applicant shall continue to be subject to the terms and conditions of the expired operating permit until the operating permit is renewed and is subject to the application of 75-2-217. The applicant is not entitled to the protection of this subsection if the delay in final action by the department on the application results from the applicant's failure to submit in a timely manner information requested by the department to process the application.

(5) Except as provided in subsection (8), if the department approves or denies an application for an operating permit or the renewal, modification, or amendment of a permit under 75-2-217 and this section, any person that participated in the public comment process required under 75-2-217(7) may request a hearing before the ~~board department~~ BOARD. The request for a hearing must be filed within 30 days after the department renders its decision and must include an affidavit setting forth the grounds for the request. The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing ~~before the~~ before the ~~board department~~ under this subsection.

(6) (a) Except as provided in subsection (8), the department's decision on any application is not final until 30 days have elapsed from the date of the decision.

(b) Except as provided in subsection (8), the filing of a request for hearing does not stay the department's decision. However, the ~~board department~~ BOARD may order a stay upon receipt of a petition and a finding, after notice and opportunity for an informal hearing, that:

(i) the person requesting the hearing is entitled to the relief demanded in the request for a hearing; or
(ii) continuation of the permit during the appeal would produce great or irreparable injury to the person requesting the hearing.

(c) Upon granting a stay, the ~~board department~~ BOARD may require a written undertaking to be given by the party requesting the stay for the payment of costs and damages incurred by the permit applicant and its employees if the ~~board department~~ BOARD determines that the permit was properly issued. When requiring an undertaking, the ~~board department~~ BOARD shall use the same procedures and limitations as are provided in 27-19-306(2) through (4) for undertakings on injunctions.

(7) The requirements of subsections (5) and (6) also apply to any action initiated by the department to suspend, revoke, modify, or amend an operating permit issued under this section.

(8) The denial by the department of an application under 75-2-217 and this section is not subject to review by the ~~board~~ ~~department~~ BOARD or judicial review if the basis for denial is the written objection of the appropriate federal agency acting pursuant to the federal Clean Air Act, 42 U.S.C. 7401, et seq.

(9) Compliance with an operating permit granted or renewed under 75-2-217 and this section is considered to be compliance with the requirements of this chapter only if the permit expressly includes those requirements or an express determination that those requirements are not applicable. This subsection does not apply to general permits provided for under 75-2-217."

Section 20. Section 75-2-219, MCA, is amended to read:

"75-2-219. Permits for operation -- limitations. Sections 75-2-217 and 75-2-218 may not be construed to:

(1) affect the department's issuance of a permit for the construction, installation, alteration, or use of a source of air pollutants pursuant to 75-2-211 or 75-2-215;

(2) restrict the ~~board's~~ ~~department's~~ authority to adopt regulations providing for a single air quality permit system; or

(3) affect permits, allowances, phase II compliance schedules, or other acid rain provisions under Subchapter IV of the federal Clean Air Act, 42 U.S.C. 7651, et seq."

Section 21. Section 75-2-220, MCA, is amended to read:

"75-2-220. Fees -- special assessments -- late payment assessments -- credit. (1) A person required to obtain a permit or to register a facility pursuant to this chapter shall submit to the department fees set ~~by the board~~ pursuant to ~~75-2-111~~ 75-2-112 that are sufficient to cover the reasonable costs, direct and indirect, of developing and administering the permitting or registration requirements in this chapter, including:

(a) reviewing and acting upon a permit application or a registration or modifying, amending, or updating a permit or registration;

(b) implementing and enforcing the terms and conditions of a permit issued pursuant to this chapter or an administrative rule or other regulatory requirement adopted pursuant to this chapter. This does not include any court costs or other costs associated with an enforcement action. If the permit is not issued, the department

1 shall return this portion of the fee to the applicant.

2 (c) emissions and ambient monitoring;

3 (d) preparing generally applicable rules or guidance;

4 (e) modeling, analysis, and demonstrations;

5 (f) preparing inventories and tracking emissions;

6 (g) providing support to sources under the small business stationary source technical and
7 environmental compliance assistance program; and

8 (h) all other costs required to be recovered pursuant to Subchapter V of the federal Clean Air Act, 42
9 U.S.C. 7661, et seq.

10 (2) For a permit or registration fee based on emissions, the fee must be based on emissions of air
11 pollutants regulated under this chapter, including but not limited to volatile organic compounds, each air
12 pollutant regulated under section 7411 or 7412 of the federal Clean Air Act, 42 U.S.C. 7401, et seq., and each
13 air pollutant subject to a national primary ambient air quality standard.

14 (3) The ~~board~~department shall by rule provide for the annual review of all fees assessed for persons
15 holding an operating permit issued under 75-2-217 and 75-2-218 to ensure the collection of revenue sufficient
16 to cover the costs of administering the operating permit requirements of this chapter, as required by Subchapter
17 V of the federal Clean Air Act.

18 (4) In addition to the fees required under subsection (1), the ~~board~~department may order the
19 assessment of additional fees required to fund specific activities of the department that are directed at a
20 particular geographic area if the legislature authorizes the activities and appropriates funds for the activities,
21 including emissions or ambient monitoring, modeling analysis or demonstrations, and emissions inventories or
22 tracking. Additional assessments may be levied only on those sources that are within or are believed by the
23 department to be impacting the geographic area. Before the ~~board~~department may require the fees, it shall first
24 determine, after opportunity for hearing, that the activities to be funded are necessary for the administration or
25 implementation of this chapter, that the amount of the requested fees is appropriate, that the assessments
26 apportion the required funding in an equitable manner, and that the department has obtained the necessary
27 appropriation. The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4,
28 part 6, apply to a hearing before the ~~board~~department under this subsection.

(5) (a) If the permitholder or registrant fails to pay in a timely manner a fee required under subsection (1), in addition to the fee, the department may:

(i) impose a penalty not to exceed 50% of the fee, plus interest on the required fee computed as provided in 15-1-216; or

(ii) revoke the permit or registration consistent with those procedures established under this chapter for permit revocation.

(b) Within 1 year of revocation, the department may reissue the revoked permit or registration after the permitholder or registrant has paid all outstanding fees required under subsections (1) and (4), including all penalties and interest provided for under this subsection (5). In reissuing the revoked permit, the department may modify the terms and conditions of the permit as necessary to account for changes in air quality occurring since revocation.

(c) The ~~board~~department shall by rule provide for the implementation of this subsection (5), including criteria for imposition of the sanctions described in this subsection (5).

(6) The ~~board~~department may by rule allow the reduction of a fee required under this section for an operating permit or permit renewal to account for the financial resources of a category of small business stationary sources.

(7) As a condition of the continuing validity of a permit issued by the department under this chapter prior to October 1, 1993, the ~~board~~department may by rule require the permitholder to pay the fees under subsections (1) and (4).

(8) For an existing source of air pollutants that is subject to Subchapter V of the federal Clean Air Act and that is not required to hold an air quality permit from the department as of October 1, 1993, the ~~board~~department may, as a condition of continued operation, require by rule that the owner or operator of the source pay the fees under subsections (1) and (4).

(9) (a) The department shall give written notice of the fee to be assessed and the basis for the department's fee assessment under this section to the owner or operator of the air pollutant source. The owner or operator may appeal the department's fee assessment ~~to the board~~ TO THE BOARD within 20 days after receipt of the written notice.

(b) An appeal must be based upon the allegation that the fee assessment is erroneous or excessive.

1 An appeal may not be based on the amount of the fee contained in the schedule adopted by the ~~board~~
2 department.

3 (c) If any part of the fee assessment is not appealed, it must be paid to the department upon receipt
4 of the notice required in subsection (9)(a).

5 (d) The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4,
6 part 6, apply to a hearing before the ~~board~~ department ~~BOARD~~ under this subsection (9).

7 (10) The total of the fees charged to an applicant under subsections (1) and (4) of this section must be
8 reduced by the amount of any credit accruing to the applicant under 75-2-225. The department may not
9 increase fee assessments beyond legislative appropriation levels to adjust for any credit claimed under 75-2-
10 225. The credit applied under 75-2-225 may not limit the department's ability to collect fees sufficient to cover
11 the reasonable costs, both direct and indirect, of developing and administering the permitting and registration
12 requirements of this chapter."
13

14 **Section 22.** Section 75-2-221, MCA, is amended to read:

15 **"75-2-221. Deposit of air quality permitting and registration fees.** (1) All money collected by the
16 department pursuant to ~~75-2-111~~ 75-2-112 and 75-2-220 must be deposited in an account in the state special
17 revenue fund to be appropriated by the legislature to the department for the development and administration of
18 the permitting and registration requirements of this chapter.

19 (2) Upon request, the expenditure by the department of funds in this account may be audited by a
20 qualified auditor at the end of each fiscal year. The cost of the audit must be paid by the person requesting the
21 audit."
22

23 **Section 23.** Section 75-2-231, MCA, is amended to read:

24 **"75-2-231. Medical waste and hazardous waste incineration -- additional permit requirements.**

25 (1) Because of the potential emission of chlorinated dioxins, furans, heavy metals, and carcinogens as a result
26 of the incineration of medical waste and hazardous waste and the potential health risk these chemicals pose,
27 the ~~board~~ department shall adopt rules establishing additional permit requirements for commercial medical
28 waste and commercial hazardous waste incinerators. For the purposes of this section, the term "commercial

1 medical waste incinerator" does not include hospital or medical facility incinerators that primarily incinerate
2 medical waste generated onsite. The ~~board~~department shall adopt rules that:

3 (a) regulate the type and amount of plastic and other materials in the medical waste stream and
4 hazardous waste stream that may be a source of chlorine, in order to minimize the potential emission of
5 chlorinated dioxins, furans, and carcinogens;

6 (b) require commercial medical waste and commercial hazardous waste incinerators to achieve the
7 lowest achievable emission rate to prevent the public health risk from air emissions or ambient concentrations
8 from exceeding the negligible risk standard required by 75-2-215 and any applicable federal allowable intake
9 standards, as determined pursuant to subsection (3), for dioxins, furans, heavy metals, and other hazardous air
10 pollutants;

11 (c) implement the requirements of subsection (2), including establishing procedures and standards for
12 the collection of high-quality scientific information and for the submission of the information by the applicant;

13 (d) establish procedures for the monitoring, testing, and inspection of:

14 (i) the medical waste stream and hazardous waste stream, including heavy metals and possible
15 precursors to the formation of chlorinated dioxins, furans, and carcinogens;

16 (ii) combustion, including destruction and removal efficiencies; and

17 (iii) emissions, including continuous emission monitoring and air pollution control devices; and

18 (e) are necessary to implement the provisions of this section and to coordinate the requirements
19 under this section with the requirements contained in 75-2-211 and 75-2-215.

20 (2) A person who applies for an air quality permit or alteration pursuant to 75-2-211 and 75-2-215 for
21 a commercial medical waste incinerator or commercial hazardous waste incinerator shall provide, to the
22 satisfaction of the department, the following information:

23 (a) a dispersion model of emissions, using approved methods, and those studies that are necessary
24 to identify the potential community exposure;

25 (b) an analysis of the potential pathways for human exposure to air contaminants, particularly
26 chlorinated dioxins, furans, heavy metals, and other carcinogens, including the potential for inhalation,
27 ingestion, and physical contact by the affected communities; and

28 (c) a quantitative analysis of the estimated total possible human exposure to chlorinated dioxins,

1 furans, heavy metals, and carcinogens for the affected communities.

2 (3) The department may not issue or alter an air quality permit pursuant to this chapter until the
3 department has determined, based upon an analysis of the information provided by the applicant pursuant to
4 subsection (2) and other necessary and relevant data, that the public health risk from air emissions or ambient
5 concentrations of chlorinated dioxins, furans, heavy metals, and other hazardous air pollutants will not exceed
6 the negligible risk standard required by 75-2-215 and any applicable federal standards for allowable intake, as
7 determined by the department after a review of established and relevant federal standards and guidelines.

8 (4) This section may not be construed in any way to:

9 (a) require the ~~board~~ department to promulgate standards for the allowable intake of any substances
10 for which the federal government has not established standards;

11 (b) allow the ~~board~~ department to promulgate standards for the allowable intake of any substances for
12 which the federal government has established standards that are more stringent than the federal standards; or

13 (c) limit or otherwise impair the duty of the department under 75-2-215 to determine that emissions
14 and ambient concentrations will constitute a negligible risk as required by 75-2-215(3)(d), including emissions
15 and ambient concentrations of dioxins, furans, heavy metals, and carcinogens, before issuing an air quality
16 permit pursuant to 75-2-211 and 75-2-215."

17

18 **Section 24.** Section 75-2-234, MCA, is amended to read:

19 **"75-2-234. Registration.** The ~~board~~ department may adopt rules for the registration of certain classes
20 of sources of air contaminants in lieu of a permit application required under 75-2-211(2)."

21

22 **Section 25.** Section 75-2-301, MCA, is amended to read:

23 **"75-2-301. Local air pollution control programs -- consistency with state and federal**
24 **regulations -- procedure for public notice and comment required.** (1) After public hearing, a municipality or
25 county may establish and administer a local air pollution control program if the program is consistent with this
26 chapter and is approved by the ~~board~~ department.

27 (2) If a local air pollution control program established by a county encompasses all or part of a
28 municipality, the county and each municipality shall approve the program in accordance with subsection (1).

(3) (a) Except as provided in subsection (5), the ~~board~~ department by order may approve a local air pollution control program that:

(i) subject to subsection (4), provides by rule, ordinance, or local law for requirements compatible with, more stringent than, or more extensive than those imposed by 75-2-203, 75-2-204, 75-2-211, 75-2-212, 75-2-215, 75-2-217 through 75-2-219, and 75-2-402 and rules adopted under these sections;

(ii) provides for the enforcement of requirements established under subsection (3)(a)(i) by appropriate administrative and judicial processes; and

(iii) provides for administrative organization, staff, financial resources, and other resources necessary to effectively and efficiently carry out the program. As part of meeting these requirements, a local air pollution control program may administer the permit or registration fee provisions of 75-2-220. The permit or registration fees collected by a local air pollution control program must be deposited in a county special revenue fund to be used by the local air pollution control program for administration of local air pollution control program permitting or registration activities.

(b) ~~Board~~ Department approval of a rule, ordinance, or local law that is more stringent than the comparable state law is subject to the provisions of subsection (4).

(4) (a) A local air pollution control program may, subject to approval by the ~~board~~ department, adopt a rule, ordinance, or local law to implement this chapter that is more stringent than comparable state or federal regulations or guidelines only if:

(i) a public hearing is held;

(ii) public comment is allowed; and

(iii) the ~~board~~ department or the local air pollution control program makes a written finding after the public hearing and comment period that is based on evidence in the record that the proposed local standard or requirement:

(A) protects public health or the environment of the area;

(B) can mitigate harm to the public health or the environment; and

(C) is achievable with current technology.

(b) The written finding required under subsection (4)(a)(iii) must reference information and peer-reviewed scientific studies contained in the record that form the basis for the ~~board's~~ department's or the local

1 air pollution control program's conclusion. The written finding must also include information from the hearing
2 record regarding costs to the regulated community that are directly attributable to the proposed local standard
3 or requirement.

4 (c) (i) A person or entity affected by a rule, ordinance, or local law approved or adopted after January
5 1, 1996, and before May 1, 2001, that the person or entity believes is more stringent than comparable state or
6 federal regulations or guidelines may petition the ~~board-department~~ or the local air pollution control program to
7 review the rule, ordinance, or local law.

8 (ii) If the ~~board-department~~ or local air pollution control program determines that the rule, ordinance, or
9 local law is more stringent than state or federal regulations or guidelines, the ~~board-department~~ or local air
10 pollution control program shall either revise the rule, ordinance, or local law to conform to the state or federal
11 regulations or guidelines or follow the process provided in subsections (4)(a) and (4)(b) within a reasonable
12 period of time, not to exceed 6 months after receiving the petition.

13 (5) Except for those emergency powers provided for in 75-2-402, the ~~board-department~~ may not
14 delegate to a local air pollution control program the authority to control any air pollutant source that:

15 (a) requires the preparation of an environmental impact statement in accordance with Title 75,
16 chapter 1, part 2;

17 (b) is subject to regulation under the Montana Major Facility Siting Act, as provided in Title 75, chapter
18 20; or

19 (c) has the potential to emit 250 tons a year or more of any pollutant subject to regulation under this
20 chapter, including fugitive emissions, unless the authority to control the source was delegated to a local air
21 pollution control program prior to January 1, 1991.

22 (6) If the ~~board-department~~ finds that the location, character, or extent of particular concentrations of
23 population, air pollutant sources, or geographic, topographic, or meteorological considerations or any
24 combination of these makes impracticable the maintenance of appropriate levels of air quality without an
25 areawide air pollution control program, the ~~board-department~~ may determine the boundaries within which the
26 program is necessary and require it as the only acceptable alternative to direct state administration.

27 (7) If the ~~board-department~~ has reason to believe that any part of an air pollution control program in
28 force under this section is either inadequate to prevent and control air pollution in the jurisdiction to which the

1 program relates or is being administered in a manner inconsistent with this chapter, the ~~board~~-department shall,
2 on notice, conduct a hearing on the matter.

3 (8) If, after the hearing, the ~~board~~-department determines that any part of the program is inadequate
4 to prevent and control air pollution in the jurisdiction to which it relates or that it is not accomplishing the
5 purposes of this chapter, it shall require that necessary corrective measures be taken within a reasonable time,
6 not to exceed 60 days.

7 (9) If the jurisdiction fails to take these measures within the time required, the department shall
8 administer within that jurisdiction all of the provisions of this chapter, including the terms contained in any
9 applicable ~~board~~-department order, that are necessary to correct the deficiencies found by the ~~board~~
10 department. The department's control program supersedes all municipal or county air pollution laws, rules,
11 ordinances, and requirements in the affected jurisdiction. The cost of the department's action is a charge on the
12 jurisdiction.

13 (10) If the ~~board~~-department finds that the control of a particular air pollutant source because of its
14 complexity or magnitude is beyond the reasonable capability of the local jurisdiction or may be more efficiently
15 and economically performed at the state level, it may ~~direct the department to~~ assume and retain control over
16 that air pollutant source. A charge may not be assessed against the jurisdiction. Findings made under this
17 subsection may be either on the basis of the nature of the sources involved or on the basis of their relationship
18 to the size of the communities in which they are located.

19 (11) A jurisdiction in which the department administers all or part of its air pollution control program
20 under subsection (9) may, ~~with the approval of the board,~~ establish or resume an air pollution control program
21 that meets the requirements of subsection (3).

22 (12) A municipality or county may administer all or part of its air pollution control program in
23 cooperation with one or more municipalities or counties of this state or of other states.

24 (13) Local air pollution control programs established under this section shall provide procedures for
25 public notice, public hearing, public comment, and appeal for any proposed new or revised rules, ordinances, or
26 local laws adopted pursuant to this section. The procedures must comply with the following requirements:

27 (a) The local air pollution control program shall create and maintain a list of interested persons who
28 wish to be informed of actions related to rules, ordinances, or local laws adopted by the local air pollution

1 control program.

2 (b) At least 30 days prior to the adoption, revision, or repeal of a rule, ordinance, or law, the local air
3 pollution control program shall give written notice of its intended action.

4 (c) The notice required under subsection (13)(b) must include:

5 (i) a statement of the terms or substance of the intended action or a description of the subjects and
6 issues affected by the intended action;

7 (ii) an explanation of the procedure for a person to be included on the list of interested persons
8 established pursuant to subsection (13)(a);

9 (iii) an explanation of the procedures and deadlines for presentation of oral or written comments
10 related to the intended action;

11 (iv) an explanation of the process for requesting a public hearing as provided in subsection (13)(f); and

12 (v) the rationale for the intended action. The rationale must:

13 (A) include an explanation of why the intended action is reasonably necessary to implement the goals
14 and purposes of the local air pollution control program;

15 (B) specifically address those intended actions for which there are no similar state or federal
16 regulations or guidelines; and

17 (C) be written in plain, easily understood language.

18 (d) For the purposes of subsection (13)(c)(v), a statement of authority to adopt a rule, ordinance, or
19 local law does not, standing alone, constitute a showing of reasonable necessity for the intended action.

20 (e) The local air pollution control program shall mail a copy of the proposed rule, ordinance, or local
21 law to all interested persons on the list established pursuant to subsection (13)(a) who have made timely
22 requests to be included on the list.

23 (f) If at least 10 of the persons who will be directly affected by the proposed rule, ordinance, or local
24 law request a public hearing, the local air pollution control program shall hold a hearing to hear comments from
25 the public on the intended action.

26 (g) The local air pollution control program shall prepare a written response to all comments submitted
27 in writing or presented at the public hearing for consideration prior to adoption, revision, or repeal of the
28 proposed rule, ordinance, or local law.

(h) A person who submits a written comment on a proposed action or who attends a public hearing in regard to a proposed action must be informed of the final action."

Section 26. Section 75-2-302, MCA, is amended to read:

"75-2-302. State and federal aid. (1) Any local air pollution control program meeting the requirements of this chapter and rules made pursuant ~~thereto shall be~~ to this chapter is eligible for state aid in an amount up to 30% of the locally funded annual operating cost ~~thereof~~ of the program.

(2) Federal aid granted to the state for developing or maintaining a local air pollution control program that is subsequently granted to a local program is not considered state aid.

(3) Subdivisions of the state may make application for, receive, administer, and expend any federal aid for the control of air pollution or the development and administration of programs related to air pollution control, provided the program is currently approved by the ~~board~~ department under 75-2-301."

Section 35. Section 75-2-401, MCA, is amended to read:

~~"75-2-401. Enforcement -- notice -- order for corrective action -- administrative penalty. (1) When the department believes that a violation of this chapter, a rule adopted under this chapter, or a condition or limitation imposed by a permit issued pursuant to this chapter has occurred, it may cause written notice to be served personally or by certified mail on the alleged violator or the violator's agent. The notice must specify the provision of this chapter, the rule, or the permit condition or limitation alleged to be violated and the facts alleged to constitute a violation. The notice may include an order to take necessary corrective action within a reasonable period of time stated in the order or an order to pay an administrative penalty, or both. The order becomes final unless, within 30 days after the notice is received, the person named requests in writing a hearing before the board department. On receipt of the request, the board department shall schedule a hearing.~~

~~(2) If, after a hearing held under subsection (1), the board department finds that violations have occurred, it shall issue an appropriate order for the prevention, abatement, or control of the emissions involved or for the taking of other corrective action or assess an administrative penalty, or both. As appropriate, an order issued as part of a notice or after a hearing may prescribe the date by which the violation must cease; time limits for particular action in preventing, abating, or controlling the emissions; or the date by which the~~

administrative penalty must be paid. If, after a hearing on an order contained in a notice, the board ~~department~~ finds that a violation has not occurred or is not occurring, it shall rescind the order.

~~(3) (a) An action initiated under this section may include an administrative civil penalty of not more than \$10,000 for each day of each violation, not to exceed a total of \$80,000. If an order issued by the board ~~department~~ under this section requires the payment of an administrative civil penalty, the board ~~department~~ shall state findings and conclusions describing the basis for its penalty assessment.~~

~~(b) Administrative penalties collected under this section must be deposited in the alternative energy revolving loan account established in 75-25-101.~~

~~(c) Penalties imposed by an administrative order under this section may not be assessed for any day of violation that occurred more than 2 years prior to the issuance of the initial notice and order by the department under subsection (1).~~

~~(d) In determining the amount of penalty to be assessed for an alleged violation under this section, the department or board, as appropriate, shall consider the penalty factors in 75-1-1001.~~

~~(e) The department may bring a judicial action to enforce a final administrative order issued pursuant to this section. The action must be filed in the district court of the county in which the violation occurred or, if mutually agreed on by the parties in the action, in the district court of the first judicial district, Lewis and Clark County.~~

~~(4) The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing conducted under this section.~~

~~(5) Instead of issuing the order provided for in subsection (1), the department may either:~~

~~(a) require that the alleged violators appear before the board ~~department~~ for a hearing at a time and place specified in the notice and answer the charges complained of; or~~

~~(b) initiate action under 75-2-412 or 75-2-413.~~

~~(6) This chapter does not prevent the board or department from making efforts to obtain voluntary compliance through warning, conference, or any other appropriate means.~~

~~(7) In connection with a hearing held under this section, the board ~~department~~ may and on application by a party shall compel the attendance of witnesses and the production of evidence on behalf of the parties."~~

Section 36. Section 75-2-402, MCA, is amended to read:

~~"75-2-402. Emergency procedure. (1) Any other law to the contrary notwithstanding, if the department finds that a generalized condition of air pollution exists and that it creates an emergency requiring immediate action to protect human health or safety, the department shall order persons causing or contributing to the air pollution to immediately reduce or discontinue the emission of air contaminants. Upon issuance of this order, the department shall fix a place and time within 24 hours for a hearing to be held before the board department. Within 24 hours after the start of the hearing and without adjournment, the board department shall confirm, modify, or set aside the order of the department.~~

~~(2) Except as provided in subsection (1), if the department finds that emissions from the operation of one or more air contaminant sources are causing imminent danger to human health or safety, it may order the person responsible for the operation in question to reduce or discontinue emissions immediately, without regard for 75-2-401. In this event, the requirements for hearing and confirmation, modification, or setting aside of orders as provided in subsection (1) apply.~~

~~(3) This section does not limit any power that the governor or any other officer may have to declare an emergency and act on the basis of this declaration, whether the power is conferred by statute or the constitution or is inherent to the office."~~

Section 37. Section 75-2-411, MCA, is amended to read:

~~"75-2-411. Judicial review. (1) A person aggrieved by an order of the board department or local control authority may apply for rehearing upon one or more of the following grounds and upon no other grounds:~~

- ~~(a) the board department or local control authority acted without or in excess of its powers;~~
- ~~(b) the order was procured by fraud;~~
- ~~(c) the order is contrary to the evidence;~~
- ~~(d) the applicant has discovered new evidence, material to the applicant, that the applicant could not with reasonable diligence have discovered and produced at the hearing; or~~
- ~~(e) competent evidence was excluded to the prejudice of the applicant.~~

(2) ~~The petition must be in a form and filed at a time that the board department prescribes.~~

(3) ~~(a) Within 30 days after the application for rehearing is denied or, if the application is granted, within 30 days after the decision on the rehearing, an aggrieved party may appeal to the district court of the judicial district of the state that is the situs of property affected by the order.~~

~~(b) The appeal must be taken by serving a written notice of appeal upon the presiding officer of the board department. Service must be made by the delivery of a copy of the notice to the presiding officer department and by filing the original with the clerk of the court to which the appeal is taken. Immediately after service upon the board, the board department shall certify to the district court the entire record and proceedings, including all testimony and evidence taken by the board department. Immediately upon receiving the certified record, the district court shall fix a day for filing of briefs and hearing arguments on the cause and shall cause a notice of the dates to be served upon the board department and the appellant.~~

~~(c) The court shall hear and decide the cause upon the record of the board department. The court shall determine whether or not the board department regularly pursued its authority, whether or not the findings of the board department were supported by substantial competent evidence, and whether or not the board department made errors of law prejudicial to the appellant.~~

~~(4) Either the board department or the person aggrieved may appeal from the decision of the district court to the supreme court. The proceedings before the supreme court must be limited to a review of the record of the hearing before the board department and of the district court's review of that record."~~

Section 38. Section 75-2-421, MCA, is amended to read:

"75-2-421. ~~Persons subject to noncompliance penalties -- exemptions.~~ (1) Except as provided in subsection (2), the department may assess and collect a noncompliance penalty from any person who owns or operates:

~~(a) a stationary source (other than a primary nonferrous smelter that has received a nonferrous smelter order under 42 U.S.C. 7419) that is not in compliance with any emission limitation specified in an order of the board department, emission standard, or compliance schedule under the state implementation plan approved by the federal environmental protection agency;~~

~~(b) a stationary source that is not in compliance with an emission limitation, emission standard,~~

1 standard of performance, or other requirement under this chapter or 42 U.S.C. 7411, 7412, 7477, or 7603;

2 (c) ~~a stationary source that is not in compliance with any other requirement under this chapter or any~~
3 ~~requirement of Subchapter V of the federal Clean Air Act, 42 U.S.C. 7661, et seq.; or~~

4 (d) ~~any source referred to in subsections (1)(a), (1)(b), or (1)(c) that has been granted an exemption,~~
5 ~~extension, or suspension under subsection (2) or that is covered by a compliance order, or a primary~~
6 ~~nonferrous smelter that has received a primary nonferrous smelter order under 42 U.S.C. 7419, if that source is~~
7 ~~not in compliance with any interim emission control requirement or schedule of compliance under the extension,~~
8 ~~order, or suspension.~~

9 (2) ~~Notwithstanding the requirements of subsection (1), the department may, after notice and~~
10 ~~opportunity for a public hearing, exempt any source from the requirements of 75-2-421 through 75-2-429 with~~
11 ~~respect to a particular instance of noncompliance that:~~

12 (a) ~~the department finds is de minimis in nature and in duration;~~

13 (b) ~~is caused by conditions beyond the reasonable control of the source and is of no demonstrable~~
14 ~~advantage to the source; or~~

15 (c) ~~is exempt under 42 U.S.C. 7420(a)(2)(B) of the federal Clean Air Act.~~

16 (3) ~~Any person who is jointly or severally adversely affected by the department's decision may~~
17 ~~request, within 15 days after the department renders its decision, upon affidavit setting forth the grounds for it, a~~
18 ~~hearing before the board department. A hearing must be held under the provisions of the Montana~~
19 ~~Administrative Procedure Act, Title 2, chapter 4, part 6."~~

20
21 **Section 27.** Section 75-2-422, MCA, is amended to read:

22 **"75-2-422. Amount of noncompliance penalty -- late charge.** (1) The amount of the penalty ~~which~~
23 ~~that shall be~~ is assessed and collected with respect to any source under 75-2-421 through 75-2-429 ~~shall~~ must
24 be equal to:

25 (a) the amount determined in accordance with the rules adopted by the ~~board~~ department, which ~~shall~~
26 must be no less than the economic value ~~which~~ that a delay in compliance after July 1, 1979, may have for the
27 owner of ~~such~~ the source, including the quarterly equivalent of the capital costs of compliance and debt service
28 over a normal amortization period not to exceed 10 years, operation and maintenance costs foregone as a

1 result of noncompliance, and any additional economic value ~~which such a~~ that the delay may have for the
2 owner or operator of such source; minus

3 (b) the amount of any expenditure made by the owner or operator of that source during ~~any such the~~
4 quarter for the purpose of bringing that source into and maintaining compliance with ~~such the~~ requirement, to
5 the extent that ~~such the~~ expenditures have not been taken into account in the calculation of the penalty under
6 subsection (1)(a).

7 (2) To the extent that any expenditure under subsection (1)(b) made during any quarter is not
8 subtracted for ~~such the~~ quarter from the costs under subsection (1)(a), ~~such the~~ expenditure may be subtracted
9 for any subsequent quarter from ~~such the~~ costs. In no event may the amount paid be less than the quarterly
10 payment minus the amount attributed to actual cost of construction.

11 (3) If the owner or operator of any stationary source to whom notice is issued under 75-2-425 does
12 not submit a timely petition under 75-2-425(2)(b) or submits a petition ~~which that~~ is denied and if the owner or
13 operator fails to submit a calculation of the penalty assessment, a schedule for payment, and the information
14 necessary for independent verification thereof, the department may enter into a contract with any person who
15 has no financial interest in the matter to assist in determining the amount of the penalty assessment or payment
16 schedule with respect to ~~such the~~ source. The cost of carrying out ~~such the~~ contract may be added to the
17 penalty to be assessed against the owner or operator of ~~such the~~ source.

18 (4) Any person who fails to pay the amount of any penalty with respect to any source under 75-2-421
19 through 75-2-429 on a timely basis shall ~~be required to pay~~ in addition a quarterly nonpayment penalty for each
20 quarter during which ~~such the~~ failure to pay persists. ~~Such The~~ nonpayment penalty ~~shall be~~ is equal to 20% of
21 the aggregate amount of ~~such the~~ person's penalties and nonpayment penalties with respect to ~~such the~~ source
22 ~~which that~~ are unpaid as of the beginning of ~~such the~~ quarter."

23
24 **Section 40.** Section 75-2-425, MCA, is amended to read:

25 **"75-2-425. Notice of noncompliance — challenge.** (1) The department shall give a brief but
26 reasonably specific notice of noncompliance to each person who owns or operates a source subject to 75-2-
27 421(1) ~~which that~~ is not in compliance as provided in that subsection, within 30 days after the department has
28 discovered the noncompliance.

(2) ~~Each person to whom notice has been given pursuant to subsection (1) shall:~~

~~(a) calculate the amount of penalty owed (determined in accordance with 75-2-422(1)) and the schedule of payments (determined in accordance with 75-2-423) for each source and, within 45 days after issuance of the notice of noncompliance, submit that calculation and proposed schedule, together with the information necessary for an independent verification thereof, to the department; or~~

~~(b) submit to the board department a petition within 45 days after the issuance of such the notice, challenging such the notice of noncompliance or alleging entitlement to an exemption under 75-2-421(2) with respect to a particular source.~~

~~(3) Each person to whom notice of noncompliance is given shall pay the department the amount determined under 75-2-422 as the appropriate penalty unless there has been a final determination granting a petition filed pursuant to subsection (2)(b)."~~

Section 41. Section 75-2-426, MCA, is amended to read:

"75-2-426. Hearing on challenge. (1) The board department shall provide a hearing on the record and make a decision (including findings of fact and conclusions of law) not later than 90 days after the receipt of any petition under 75-2-425(2)(b) with respect to such the source.

~~(2) If the petition is denied, the petitioner shall submit the material required by 75-2-425(2)(a) to the department within 45 days of the date of decision."~~

Section 28. Section 75-2-428, MCA, is amended to read:

"75-2-428. Effect of new standards on noncompliance penalty. In the case of any emission limitation, emission standard, or other requirement approved or adopted by the ~~board~~ department under this chapter after July 1, 1979, and approved by the federal environmental protection agency as an amendment to the state implementation plan, which is more stringent than the emission limitation or requirement for the source in effect prior to such approval or promulgation, if any, or where there was no emission limitation, emission standard, or other requirement approved or adopted before July 1, 1979, the date for imposition of the noncompliance penalty under 75-2-421 through 75-2-429 shall be the date on which the source is required to be in full compliance with such emission limitation, emission standard, or other requirement or 3 years after the

1 approval or promulgation of such emission limitation or requirement, whichever is sooner."

2
3 **Section 43.** Section 75-2-515, MCA, is amended to read:

4 ~~"75-2-515. — Administrative enforcement. (1) The department may deny, suspend, or revoke the~~
5 ~~accreditation of a person that:~~

6 ~~(a) fraudulently or deceptively obtains or attempts to obtain accreditation;~~

7 ~~(b) fails to meet the qualifications for accreditation or fails to comply with the requirements of this part,~~
8 ~~a rule adopted under this part, or a permit or order issued under this part; or~~

9 ~~(c) fails to meet an applicable federal or state standard for asbestos projects.~~

10 ~~(2) When the department believes that a violation of this part, a rule adopted under this part, or a~~
11 ~~permit or order issued under this part has occurred, it may serve written notice of the violation personally or by~~
12 ~~certified mail on the alleged violator or the violator's agent. The notice must specify the provision of this part or~~
13 ~~the rule, permit, or order alleged to be violated and the facts alleged to constitute a violation. The notice may~~
14 ~~include an order to take necessary corrective action within a reasonable period of time stated in the order, an~~
15 ~~order to pay an administrative civil penalty, or both. An order becomes final unless, within 30 days after the~~
16 ~~order is received, the person that has been named requests, in writing, a hearing before the board department.~~

17 ~~(3) On receipt of a hearing request, the board department shall schedule a hearing. The contested~~
18 ~~case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to any hearing~~
19 ~~conducted under this section. If, after a hearing, the board department finds that a violation has not occurred or~~
20 ~~is not occurring, it shall rescind the order.~~

21 ~~(4) (a) An action initiated under this section may include an administrative civil penalty of not more~~
22 ~~than \$10,000 for each day of each violation, not to exceed a total of \$80,000. Any order issued by the~~
23 ~~department under this section requiring payment of an administrative civil penalty must specify the basis for the~~
24 ~~penalty assessment.~~

25 ~~(b) A penalty may not be assessed under this section for any day of violation that occurred more than~~
26 ~~3 years prior to the department issuing the order requiring payment of the penalty.~~

27 ~~(c) In determining the amount of a penalty assessed to a person under this section, the department~~
28 ~~shall consider the penalty factors in 75-1-1001.~~

~~(5) In addition to or instead of issuing an order under subsection (2), the department may:~~

~~(a) require the alleged violator to appear before the board department for a hearing at a time and place specified in the notice of hearing to answer the charges complained of; or~~

~~(b) initiate action under 75-2-514."~~

Section 29. Section 75-5-103, MCA, is amended to read:

"75-5-103. (Temporary) Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Associated supporting infrastructure" means:

(a) electric transmission and distribution facilities;

(b) pipeline facilities;

(c) aboveground ponds and reservoirs and underground storage reservoirs;

(d) rail transportation;

(e) aqueducts and diversion dams;

(f) devices or equipment associated with the delivery of an energy form or product produced at an energy development project; or

(g) other supporting infrastructure, as defined by ~~board~~ department rule, that is necessary for an energy development project.

(2) (a) "Base numeric nutrient standards" means numeric water quality criteria for nutrients in surface water that are adopted to protect the designated uses of a surface water body.

(b) The term does not include numeric water quality standards for nitrate, nitrate plus nitrite, or nitrite that are adopted to protect human health.

~~(3) "Board" means the board of environmental review provided for in 2-15-3502.~~

(3) "BOARD" MEANS THE BOARD OF ENVIRONMENTAL REVIEW PROVIDED FOR IN 2-15-3502.

~~(4)(3) (4)~~ "Contamination" means impairment of the quality of state waters by sewage, industrial wastes, or other wastes, creating a hazard to human health.

~~(5)(4) (5)~~ "Council" means the water pollution control advisory council provided for in 2-15-2107.

~~(6)(5) (6)~~ (a) "Currently available data" means data that is readily available to the department at the

1 time a decision is made, including information supporting its previous lists of water bodies that are threatened
2 or impaired.

3 (b) The term does not mean new data to be obtained as a result of department efforts.

4 ~~(7)(6)~~ (7) "Degradation" means a change in water quality that lowers the quality of high-quality waters
5 for a parameter. The term does not include those changes in water quality determined to be nonsignificant
6 pursuant to 75-5-301(5)(c).

7 ~~(8)(7)~~ (8) "Department" means the department of environmental quality provided for in 2-15-3501.

8 ~~(9)(8)~~ (9) "Disposal system" means a system for disposing of sewage, industrial, or other wastes and
9 includes sewage systems and treatment works.

10 ~~(10)(9)~~ (10) "Effluent standard" means a restriction or prohibition on quantities, rates, and
11 concentrations of chemical, physical, biological, and other constituents that are discharged into state waters.

12 ~~(11)(10)~~ (11) (a) "Energy development project" means each plant, unit, or other development and
13 associated developments, including any associated supporting infrastructure, designed for or capable of:

14 (i) generating electricity;

15 (ii) producing gas derived from coal;

16 (iii) producing liquid hydrocarbon products;

17 (iv) refining crude oil or natural gas;

18 (v) producing alcohol to be blended for ethanol-blended gasoline and that are eligible for a tax
19 incentive pursuant to Title 15, chapter 70, part 5;

20 (vi) producing biodiesel and that are eligible for a tax incentive for the production of biodiesel pursuant
21 to 15-32-701; or

22 (vii) transmitting electricity through an electric transmission line with a design capacity of equal to or
23 greater than 50 kilovolts.

24 (b) The term does not include a nuclear facility as defined in 75-20-1202.

25 ~~(12)(11)~~ (12) "Existing uses" means those uses actually attained in state waters on or after July 1,
26 1971, whether or not those uses are included in the water quality standards.

27 ~~(13)(12)~~ (13) "High-quality waters" means all state waters, except:

28 (a) ground water classified as of January 1, 1995, within the "III" or "IV" classifications established by

1 the ~~board's~~ department's classification rules; and

2 (b) surface waters that:

3 (i) are not capable of supporting any one of the designated uses for their classification; or

4 (ii) have zero flow or surface expression for more than 270 days during most years.

5 ~~(14)(13)~~ (14) "Impaired water body" means a water body or stream segment for which sufficient
6 credible data shows that the water body or stream segment is failing to achieve compliance with applicable
7 water quality standards.

8 ~~(15)(14)~~ (15) "Industrial waste" means a waste substance from the process of business or industry or
9 from the development of any natural resource, together with any sewage that may be present.

10 ~~(16)(15)~~ (16) "Interested person" means a person who has a real property interest, a water right, or an
11 economic interest that is or may be directly and adversely affected by the department's preliminary decision
12 regarding degradation of state waters, pursuant to 75-5-303. The term includes a person who has requested
13 authorization to degrade high-quality waters.

14 ~~(17)(16)~~ (17) "Load allocation" means the portion of a receiving water's loading capacity that is
15 allocated to one of its existing or future nonpoint sources or to natural background sources.

16 ~~(18)(17)~~ (18) "Loading capacity" means the mass of a pollutant that a water body can assimilate
17 without a violation of water quality standards. For pollutants that cannot be measured in terms of mass, it
18 means the maximum change that can occur from the best practicable condition in a surface water without
19 causing a violation of the surface water quality standards.

20 ~~(19)(18)~~ (19) "Local department of health" means the staff, including health officers, employed by a
21 county, city, city-county, or district board of health.

22 ~~(20)(19)~~ (20) "Metal parameters" includes but is not limited to aluminum, antimony, arsenic, beryllium,
23 barium, cadmium, chromium, copper, fluoride, iron, lead, manganese, mercury, nickel, selenium, silver,
24 thallium, and zinc.

25 ~~(21)(20)~~ (21) "Mixing zone" means an area established in a permit or final decision on nondegradation
26 issued by the department where water quality standards may be exceeded, subject to conditions that are
27 imposed by the department and that are consistent with the rules adopted by the ~~board~~ department.

28 ~~(22)(21)~~ (22) "Nutrient standards variance" means numeric water quality criteria for nutrients based on

1 a determination that base numeric nutrient standards cannot be achieved because of economic impacts or
2 because of the limits of technology. The term includes individual, general, and alternative nutrient standards
3 variances in accordance with 75-5-313.

4 ~~(23)(22)~~ (23) "Nutrient work group" means an advisory work group, convened by the department,
5 representing publicly owned and privately owned point sources of pollution, nonpoint sources of pollution, and
6 other interested parties that will advise the department on the base numeric nutrient standards, the
7 development of nutrient standards variances, and the implementation of those standards and variances
8 together with associated economic impacts.

9 ~~(24)(23)~~ (24) "Other wastes" means garbage, municipal refuse, decayed wood, sawdust, shavings,
10 bark, lime, sand, ashes, offal, night soil, oil, grease, tar, heat, chemicals, dead animals, sediment, wrecked or
11 discarded equipment, radioactive materials, solid waste, and all other substances that may pollute state waters.

12 ~~(25)(24)~~ (25) "Outstanding resource waters" means:

13 (a) state surface waters located wholly within the boundaries of areas designated as national parks or
14 national wilderness areas as of October 1, 1995; or

15 (b) other surface waters or ground waters classified by the ~~board~~ department under the provisions of
16 75-5-316 and approved by the legislature.

17 ~~(26)(25)~~ (26) "Owner or operator" means a person who owns, leases, operates, controls, or supervises
18 a point source.

19 ~~(27)(26)~~ (27) "Parameter" means a physical, biological, or chemical property of state water when a
20 value of that property affects the quality of the state water.

21 ~~(28)(27)~~ (28) "Person" means the state, a political subdivision of the state, institution, firm, corporation,
22 partnership, individual, or other entity and includes persons resident in Canada.

23 ~~(29)(28)~~ (29) "Point source" means a discernible, confined, and discrete conveyance, including but not
24 limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, or vessel or
25 other floating craft, from which pollutants are or may be discharged.

26 ~~(30)(29)~~ (30) (a) "Pollution" means:

27 (i) contamination or other alteration of the physical, chemical, or biological properties of state waters
28 that exceeds that permitted by Montana water quality standards, including but not limited to standards relating

1 to change in temperature, taste, color, turbidity, or odor; or

2 (ii) the discharge, seepage, drainage, infiltration, or flow of liquid, gaseous, solid, radioactive, or other
3 substance into state water that will or is likely to create a nuisance or render the waters harmful, detrimental, or
4 injurious to public health, recreation, safety, or welfare, to livestock, or to wild animals, birds, fish, or other
5 wildlife.

6 (b) The term does not include:

7 (i) a discharge, seepage, drainage, infiltration, or flow that is authorized under the pollution discharge
8 permit rules adopted by the ~~board~~ department under this chapter;

9 (ii) activities conducted under this chapter that comply with the conditions imposed by the department
10 in short-term authorizations pursuant to 75-5-308;

11 (iii) contamination of ground water within the boundaries of an underground mine using in situ coal
12 gasification and operating in accordance with a permit issued under 82-4-221.

13 (c) Contamination referred to in subsection ~~(30)(b)(iii)~~ ~~(29)(b)(iii)~~ (30)(B)(III) does not require a mixing
14 zone.

15 ~~(31)(30)~~ (31) "Sewage" means water-carried waste products from residences, public buildings,
16 institutions, or other buildings, including discharge from human beings or animals, together with ground water
17 infiltration and surface water present.

18 ~~(32)(31)~~ (32) "Sewage system" means a device for collecting or conducting sewage, industrial wastes,
19 or other wastes to an ultimate disposal point.

20 ~~(33)(32)~~ (33) "Standard of performance" means a standard adopted by the ~~board~~ department for the
21 control of the discharge of pollutants that reflects the greatest degree of effluent reduction achievable through
22 application of the best available demonstrated control technology, processes, operating methods, or other
23 alternatives, including, when practicable, a standard permitting no discharge of pollutants.

24 ~~(34)(33)~~ (34) (a) "State waters" means a body of water, irrigation system, or drainage system, either
25 surface or underground.

26 (b) The term does not apply to:

27 (i) ponds or lagoons used solely for treating, transporting, or impounding pollutants; or

28 (ii) irrigation waters or land application disposal waters when the waters are used up within the

1 irrigation or land application disposal system and the waters are not returned to state waters.

2 ~~(35)(34)~~ (35) "Sufficient credible data" means chemical, physical, or biological monitoring data, alone
3 or in combination with narrative information, that supports a finding as to whether a water body is achieving
4 compliance with applicable water quality standards.

5 ~~(36)(35)~~ (36) "Threatened water body" means a water body or stream segment for which sufficient
6 credible data and calculated increases in loads show that the water body or stream segment is fully supporting
7 its designated uses but threatened for a particular designated use because of:

8 (a) proposed sources that are not subject to pollution prevention or control actions required by a
9 discharge permit, the nondegradation provisions, or reasonable land, soil, and water conservation practices; or

10 (b) documented adverse pollution trends.

11 ~~(37)(36)~~ (37) "Total maximum daily load" or "TMDL" means the sum of the individual waste load
12 allocations for point sources and load allocations for both nonpoint sources and natural background sources
13 established at a level necessary to achieve compliance with applicable surface water quality standards.

14 ~~(38)(37)~~ (38) "Treatment works" means works, including sewage lagoons, installed for treating or
15 holding sewage, industrial wastes, or other wastes.

16 ~~(39)(38)~~ (39) "Waste load allocation" means the portion of a receiving water's loading capacity that is
17 allocated to one of its existing or future point sources.

18 ~~(40)(39)~~ (40) "Water quality protection practices" means those activities, prohibitions, maintenance
19 procedures, or other management practices applied to point and nonpoint sources designed to protect,
20 maintain, and improve the quality of state waters. Water quality protection practices include but are not limited
21 to treatment requirements, standards of performance, effluent standards, and operating procedures and
22 practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from material storage.

23 ~~(41)(40)~~ (41) "Water well" means an excavation that is drilled, cored, bored, washed, driven, dug,
24 jetted, or otherwise constructed and intended for the location, diversion, artificial recharge, or acquisition of
25 ground water.

26 ~~(42)(41)~~ (42) "Watershed advisory group" means a group of individuals who wish to participate in an
27 advisory capacity in revising and reprioritizing the list of water bodies developed under 75-5-702 and in the
28 development of TMDLs under 75-5-703, including those groups or individuals requested by the department to

1 participate in an advisory capacity as provided in 75-5-704.

2 **75-5-103. (Effective on occurrence of contingency) Definitions.** Unless the context requires
3 otherwise, in this chapter, the following definitions apply:

4 (1) "Associated supporting infrastructure" means:

5 (a) electric transmission and distribution facilities;

6 (b) pipeline facilities;

7 (c) aboveground ponds and reservoirs and underground storage reservoirs;

8 (d) rail transportation;

9 (e) aqueducts and diversion dams;

10 (f) devices or equipment associated with the delivery of an energy form or product produced at an
11 energy development project; or

12 (g) other supporting infrastructure, as defined by ~~board~~ department rule, that is necessary for an
13 energy development project.

14 (2) (a) "Base numeric nutrient standards" means numeric water quality criteria for nutrients in surface
15 water that are adopted to protect the designated uses of a surface water body.

16 (b) The term does not include numeric water quality standards for nitrate, nitrate plus nitrite, or nitrite
17 that are adopted to protect human health.

18 ~~(3) "Board" means the board of environmental review provided for in 2-15-3502.~~

19 (3) "BOARD" MEANS THE BOARD OF ENVIRONMENTAL REVIEW PROVIDED FOR IN 2-15-3502.

20 ~~(4)(3) (4)~~ (4) "Contamination" means impairment of the quality of state waters by sewage, industrial
21 wastes, or other wastes, creating a hazard to human health.

22 ~~(5)(4) (5)~~ (5) "Council" means the water pollution control advisory council provided for in 2-15-2107.

23 ~~(6)(5) (6)~~ (a) "Currently available data" means data that is readily available to the department at the
24 time a decision is made, including information supporting its previous lists of water bodies that are threatened
25 or impaired.

26 (b) The term does not mean new data to be obtained as a result of department efforts.

27 ~~(7)(6) (7)~~ (7) "Degradation" means a change in water quality that lowers the quality of high-quality waters
28 for a parameter. The term does not include those changes in water quality determined to be nonsignificant

1 pursuant to 75-5-301(5)(c).

2 ~~(8)(7)~~ (8) "Department" means the department of environmental quality provided for in 2-15-3501.

3 ~~(9)(8)~~ (9) "Disposal system" means a system for disposing of sewage, industrial, or other wastes and
4 includes sewage systems and treatment works.

5 ~~(10)(9)~~ (10) "Effluent standard" means a restriction or prohibition on quantities, rates, and
6 concentrations of chemical, physical, biological, and other constituents that are discharged into state waters.

7 ~~(11)(10)~~ (11) (a) "Energy development project" means each plant, unit, or other development and
8 associated developments, including any associated supporting infrastructure, designed for or capable of:

9 (i) generating electricity;

10 (ii) producing gas derived from coal;

11 (iii) producing liquid hydrocarbon products;

12 (iv) refining crude oil or natural gas;

13 (v) producing alcohol to be blended for ethanol-blended gasoline and that are eligible for a tax
14 incentive pursuant to Title 15, chapter 70, part 5;

15 (vi) producing biodiesel and that are eligible for a tax incentive for the production of biodiesel pursuant
16 to 15-32-701; or

17 (vii) transmitting electricity through an electric transmission line with a design capacity of equal to or
18 greater than 50 kilovolts.

19 (b) The term does not include a nuclear facility as defined in 75-20-1202.

20 ~~(12)(11)~~ (12) "Existing uses" means those uses actually attained in state waters on or after July 1,
21 1971, whether or not those uses are included in the water quality standards.

22 ~~(13)(12)~~ (13) "High-quality waters" means all state waters, except:

23 (a) ground water classified as of January 1, 1995, within the "III" or "IV" classifications established by
24 the board's department's classification rules; and

25 (b) surface waters that:

26 (i) are not capable of supporting any one of the designated uses for their classification; or

27 (ii) have zero flow or surface expression for more than 270 days during most years.

28 ~~(14)(13)~~ (14) "Impaired water body" means a water body or stream segment for which sufficient

1 credible data shows that the water body or stream segment is failing to achieve compliance with applicable
2 water quality standards.

3 ~~(15)(14)~~ (15) "Industrial waste" means a waste substance from the process of business or industry or
4 from the development of any natural resource, together with any sewage that may be present.

5 ~~(16)(15)~~ (16) "Interested person" means a person who has a real property interest, a water right, or an
6 economic interest that is or may be directly and adversely affected by the department's preliminary decision
7 regarding degradation of state waters, pursuant to 75-5-303. The term includes a person who has requested
8 authorization to degrade high-quality waters.

9 ~~(17)(16)~~ (17) "Load allocation" means the portion of a receiving water's loading capacity that is
10 allocated to one of its existing or future nonpoint sources or to natural background sources.

11 ~~(18)(17)~~ (18) "Loading capacity" means the mass of a pollutant that a water body can assimilate
12 without a violation of water quality standards. For pollutants that cannot be measured in terms of mass, it
13 means the maximum change that can occur from the best practicable condition in a surface water without
14 causing a violation of the surface water quality standards.

15 ~~(19)(18)~~ (19) "Local department of health" means the staff, including health officers, employed by a
16 county, city, city-county, or district board of health.

17 ~~(20)(19)~~ (20) "Metal parameters" includes but is not limited to aluminum, antimony, arsenic, beryllium,
18 barium, cadmium, chromium, copper, fluoride, iron, lead, manganese, mercury, nickel, selenium, silver,
19 thallium, and zinc.

20 ~~(21)(20)~~ (21) "Mixing zone" means an area established in a permit or final decision on nondegradation
21 issued by the department where water quality standards may be exceeded, subject to conditions that are
22 imposed by the department and that are consistent with the rules adopted by the ~~board~~ department.

23 ~~(22)(21)~~ (22) "Nutrient standards variance" means numeric water quality criteria for nutrients based on
24 a determination that base numeric nutrient standards cannot be achieved because of economic impacts or
25 because of the limits of technology. The term includes individual, general, and alternative nutrient standards
26 variances in accordance with 75-5-313.

27 ~~(23)(22)~~ (23) "Nutrient work group" means an advisory work group, convened by the department,
28 representing publicly owned and privately owned point sources of pollution, nonpoint sources of pollution, and

1 other interested parties that will advise the department on the base numeric nutrient standards, the
2 development of nutrient standards variances, and the implementation of those standards and variances
3 together with associated economic impacts.

4 ~~(24)(23)~~ (24) "Other wastes" means garbage, municipal refuse, decayed wood, sawdust, shavings,
5 bark, lime, sand, ashes, offal, night soil, oil, grease, tar, heat, chemicals, dead animals, sediment, wrecked or
6 discarded equipment, radioactive materials, solid waste, and all other substances that may pollute state waters.

7 ~~(25)(24)~~ (25) "Outstanding resource waters" means:

8 (a) state surface waters located wholly within the boundaries of areas designated as national parks or
9 national wilderness areas as of October 1, 1995; or

10 (b) other surface waters or ground waters classified by the ~~board~~ department under the provisions of
11 75-5-316 and approved by the legislature.

12 ~~(26)(25)~~ (26) "Owner or operator" means a person who owns, leases, operates, controls, or supervises
13 a point source.

14 ~~(27)(26)~~ (27) "Parameter" means a physical, biological, or chemical property of state water when a
15 value of that property affects the quality of the state water.

16 ~~(28)(27)~~ (28) "Person" means the state, a political subdivision of the state, institution, firm, corporation,
17 partnership, individual, or other entity and includes persons resident in Canada.

18 ~~(29)(28)~~ (29) "Point source" means a discernible, confined, and discrete conveyance, including but not
19 limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, or vessel or
20 other floating craft, from which pollutants are or may be discharged.

21 ~~(30)(29)~~ (30) (a) "Pollution" means:

22 (i) contamination or other alteration of the physical, chemical, or biological properties of state waters
23 that exceeds that permitted by Montana water quality standards, including but not limited to standards relating
24 to change in temperature, taste, color, turbidity, or odor; or

25 (ii) the discharge, seepage, drainage, infiltration, or flow of liquid, gaseous, solid, radioactive, or other
26 substance into state water that will or is likely to create a nuisance or render the waters harmful, detrimental, or
27 injurious to public health, recreation, safety, or welfare, to livestock, or to wild animals, birds, fish, or other
28 wildlife.

(b) The term does not include:

(i) a discharge, seepage, drainage, infiltration, or flow that is authorized under the pollution discharge permit rules adopted by the ~~board~~ department under this chapter;

(ii) activities conducted under this chapter that comply with the conditions imposed by the department in short-term authorizations pursuant to 75-5-308;

(iii) contamination of ground water within the boundaries of a geologic storage reservoir, as defined in 82-11-101, by a carbon dioxide injection well in accordance with a permit issued pursuant to Title 82, chapter 11, part 1;

(iv) contamination of ground water within the boundaries of an underground mine using in situ coal gasification and operating in accordance with a permit issued under 82-4-221;

(c) Contamination referred to in subsections ~~(30)(b)(iii) and (30)(b)(iv)~~ ~~(29)(b)(iii) and (29)(b)(iv)~~ (30)(B)(III) AND (30)(B)(IV) does not require a mixing zone.

~~(31)(30)~~ (31) "Sewage" means water-carried waste products from residences, public buildings, institutions, or other buildings, including discharge from human beings or animals, together with ground water infiltration and surface water present.

~~(32)(31)~~ (32) "Sewage system" means a device for collecting or conducting sewage, industrial wastes, or other wastes to an ultimate disposal point.

~~(33)(32)~~ (33) "Standard of performance" means a standard adopted by the ~~board~~ department for the control of the discharge of pollutants that reflects the greatest degree of effluent reduction achievable through application of the best available demonstrated control technology, processes, operating methods, or other alternatives, including, when practicable, a standard permitting no discharge of pollutants.

~~(34)(33)~~ (34) (a) "State waters" means a body of water, irrigation system, or drainage system, either surface or underground.

(b) The term does not apply to:

(i) ponds or lagoons used solely for treating, transporting, or impounding pollutants; or

(ii) irrigation waters or land application disposal waters when the waters are used up within the irrigation or land application disposal system and the waters are not returned to state waters.

~~(35)(34)~~ (35) "Sufficient credible data" means chemical, physical, or biological monitoring data, alone

1 or in combination with narrative information, that supports a finding as to whether a water body is achieving
2 compliance with applicable water quality standards.

3 ~~(36)(35)~~ (36) "Threatened water body" means a water body or stream segment for which sufficient
4 credible data and calculated increases in loads show that the water body or stream segment is fully supporting
5 its designated uses but threatened for a particular designated use because of:

6 (a) proposed sources that are not subject to pollution prevention or control actions required by a
7 discharge permit, the nondegradation provisions, or reasonable land, soil, and water conservation practices; or

8 (b) documented adverse pollution trends.

9 ~~(37)(36)~~ (37) "Total maximum daily load" or "TMDL" means the sum of the individual waste load
10 allocations for point sources and load allocations for both nonpoint sources and natural background sources
11 established at a level necessary to achieve compliance with applicable surface water quality standards.

12 ~~(38)(37)~~ (38) "Treatment works" means works, including sewage lagoons, installed for treating or
13 holding sewage, industrial wastes, or other wastes.

14 ~~(39)(38)~~ (39) "Waste load allocation" means the portion of a receiving water's loading capacity that is
15 allocated to one of its existing or future point sources.

16 ~~(40)(39)~~ (40) "Water quality protection practices" means those activities, prohibitions, maintenance
17 procedures, or other management practices applied to point and nonpoint sources designed to protect,
18 maintain, and improve the quality of state waters. Water quality protection practices include but are not limited
19 to treatment requirements, standards of performance, effluent standards, and operating procedures and
20 practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from material storage.

21 ~~(41)(40)~~ (41) "Water well" means an excavation that is drilled, cored, bored, washed, driven, dug,
22 jetted, or otherwise constructed and intended for the location, diversion, artificial recharge, or acquisition of
23 ground water.

24 ~~(42)(41)~~ (42) "Watershed advisory group" means a group of individuals who wish to participate in an
25 advisory capacity in revising and reprioritizing the list of water bodies developed under 75-5-702 and in the
26 development of TMDLs under 75-5-703, including those groups or individuals requested by the department to
27 participate in an advisory capacity as provided in 75-5-704."

1 **Section 45.** Section 75-5-105, MCA, is amended to read:

2 ~~"75-5-105. **Confidentiality of records.** Except as provided in 80-15-108, any information concerning~~
3 ~~sources of pollution that is furnished to the board or department or that is obtained by either of them the~~
4 ~~department is a matter of public record and open to public use. However, any information unique to the owner~~
5 ~~or operator of a source of pollution that would, if disclosed, reveal methods or processes entitled to protection~~
6 ~~as trade secrets must be maintained as confidential if so determined by a court of competent jurisdiction. The~~
7 ~~owner or operator shall file a declaratory judgment action to establish the existence of a trade secret if the~~
8 ~~owner or operator wishes the information to remain confidential. The department must be served in the action~~
9 ~~and may intervene as a party. Any information not intended to be public when submitted to the board or~~
10 ~~department must be submitted in writing and clearly marked as confidential. Except as provided in 75-5-314,~~
11 ~~the data describing physical and chemical characteristics of a waste discharged to state waters may not be~~
12 ~~considered confidential. The board department may use any information in compiling or publishing analyses or~~
13 ~~summaries relating to water pollution if the analyses or summaries do not identify any owner or operator of a~~
14 ~~source of pollution or reveal any information that is otherwise made confidential by this section."~~

15
16 **Section 30.** Section 75-5-106, MCA, is amended to read:

17 **"75-5-106. Interagency cooperation -- enforcement authorization.** (1) The council, ~~BOARD, board,~~
18 ~~and the~~ department may require the use of records of all state agencies and may seek the assistance of the
19 agencies. When the department's review of a permit application submitted under another chapter or title is
20 required or requested, the department shall coordinate the review under this chapter with the review conducted
21 by the agency or unit under the other chapter, following the time schedule for that review. State, county, and
22 municipal officers and employees, including sanitarians and other employees of local departments of health,
23 shall cooperate with the council, ~~BOARD, board,~~ and ~~the~~ department in furthering the purposes of this chapter, so
24 far as is practicable and consistent with their other duties.

25 (2) The department may authorize a local water quality district established according to the provisions
26 of Title 7, chapter 13, part 45, to enforce the provisions of this chapter and rules adopted under this chapter on
27 a case-by-case basis. If a local water quality district requests the authorization, the local water quality district
28 shall present appropriate documentation to the department that a person is violating permit requirements

1 established by the department or may be causing pollution, as defined in 75-5-103, of state waters or placing or
2 causing to be placed wastes in a location where they are likely to cause pollution of state waters. The ~~board~~
3 department may adopt rules regarding the granting of enforcement authority to local water quality districts."

4
5 **Section 31.** Section 75-5-201, MCA, is amended to read:

6 **"75-5-201. ~~Board rules~~ Rules authorized.** (1) (a) The ~~board~~ department shall, except as provided in
7 75-5-411 and subject to the provisions of 75-5-203, adopt rules for the administration of this chapter.

8 (b) The ~~board~~ department shall adopt rules that describe the location and the times of the year when
9 suction dredging is permissible. These rules may be adopted only after consultation with the local conservation
10 districts in the areas subject to the rule.

11 (2) The ~~board's~~ department's rules may include a fee schedule or system for assessment of
12 administrative penalties as provided under 75-5-611."

13
14 **~~Section 48.~~** ~~Section 75-5-202, MCA, is amended to read:~~

15 **~~"75-5-202. Board hearings~~ HEARINGS.** ~~The board~~ department ~~shall hold hearings necessary for the~~
16 ~~proper administration of this chapter or, in the case of permit issuance hearings, delegate this function to the~~
17 ~~department."~~

18
19 **Section 32.** Section 75-5-203, MCA, is amended to read:

20 **"75-5-203. State regulations no more stringent than federal regulations or guidelines.** (1) Except
21 as provided in subsections (2) through (5) or unless required by state law, the ~~board~~ department may not adopt
22 a rule to implement 75-5-301, 75-5-302, 75-5-303, or 75-5-310 that is more stringent than the comparable
23 federal regulations or guidelines that address the same circumstances. The ~~board~~ department may incorporate
24 by reference comparable federal regulations or guidelines.

25 (2) The ~~board~~ department may adopt a rule to implement this chapter that is more stringent than
26 comparable federal regulations or guidelines only if the ~~board~~ department makes a written finding after a public
27 hearing and public comment and based on evidence in the record that:

28 (a) the proposed state standard or requirement protects public health or the environment of the state;

1 and

2 (b) the state standard or requirement to be imposed can mitigate harm to the public health or
3 environment and is achievable under current technology.

4 (3) The written finding must reference pertinent, ascertainable, and peer-reviewed scientific studies
5 contained in the record that forms the basis for the ~~board's department's~~ conclusion. The written finding must
6 also include information from the hearing record regarding the costs to the regulated community that are
7 directly attributable to the proposed state standard or requirement.

8 (4) (a) A person affected by a rule ~~of the board that~~ that the person believes to be more stringent
9 than comparable federal regulations or guidelines may petition the ~~board department~~ BOARD to review the rule.
10 If the ~~board department~~ BOARD determines that the rule is more stringent than comparable federal regulations or
11 guidelines, the ~~board department~~ shall comply with this section by either revising the rule to conform to the
12 federal regulations or guidelines or by making the written finding, as provided under subsection (2), within a
13 reasonable period of time, not to exceed 8 months after receiving the petition. A petition under this section does
14 not relieve the petitioner of the duty to comply with the challenged rule. The ~~board department~~ may charge a
15 petition filing fee in an amount not to exceed \$250.

16 (b) A person may also petition the ~~board department~~ BOARD for a rule review under subsection (4)(a) if
17 the ~~board department~~ adopts a rule in an area in which no federal regulations or guidelines existed and the
18 federal government subsequently establishes comparable regulations or guidelines that are less stringent than
19 the previously adopted ~~board department~~ rule.

20 (5) This section does not apply to a rule adopted under the emergency rulemaking provisions of 2-4-
21 303(1)."

22

23 **Section 33.** Section 75-5-222, MCA, is amended to read:

24 **"75-5-222. State regulation for natural conditions.** (1) The department may not apply a standard to
25 a water body for water quality that is more stringent than the nonanthropogenic condition of the water body. For
26 the parameters for which the applicable standards are more stringent than the nonanthropogenic condition, the
27 standard is the nonanthropogenic condition of the parameter in the water body. The department shall
28 implement the standard in a manner that provides for the water quality standards for downstream waters to be

1 attained and maintained.

2 (2) (a) For water bodies where the standard is more stringent than the condition of the water body but
3 subsection (1) is not applicable, the ~~board~~department shall adopt rules consistent with comparable federal
4 rules and guidelines providing criteria and procedures for the department to issue variances from standards if:

5 (i) the condition cannot reasonably be expected to be remediated during the permit term for which the
6 application for variance has been received; and

7 (ii) the discharge to which the variance applies would not materially contribute to the condition.

8 (b) A variance issued pursuant to subsection (2)(a) must be reviewed every 5 years and may be
9 modified or terminated as a result of the review."

10

11 **Section 34.** Section 75-5-301, MCA, is amended to read:

12 **"75-5-301. Classification and standards for state waters.** Consistent with the provisions of 80-15-
13 201 and this chapter, the ~~board~~department shall:

14 (1) establish the classification of all state waters in accordance with their present and future most
15 beneficial uses, creating an appropriate classification for streams that, due to sporadic flow, do not support an
16 aquatic ecosystem that includes salmonid or nonsalmonid fish;

17 (2) formulate and adopt standards of water quality, ~~giving consideration to~~ CONSIDERING the
18 economics of waste treatment and prevention. When rules are adopted regarding temporary standards, they
19 must conform with the requirements of 75-5-312. Standards ~~adopted by the board~~department must meet the
20 following requirements:

21 (a) for carcinogens, the water quality standard for protection of human health must be the value
22 associated with an excess lifetime cancer risk level, assuming continuous lifetime exposure, not to exceed 1×10^{-3}
23 in the case of arsenic and 1×10^{-5} for other carcinogens. However, if a standard established at a risk level
24 of 1×10^{-3} for arsenic or 1×10^{-5} for other carcinogens violates the maximum contaminant level obtained from
25 40 CFR, part 141, then the maximum contaminant level must be adopted as the standard for that carcinogen.

26 (b) standards for the protection of aquatic life do not apply to ground water.

27 (3) review, from time to time at intervals of not more than 3 years and, to the extent permitted by this
28 chapter, revise established classifications of waters and adopted standards of water quality;

(4) adopt rules governing the granting of mixing zones, requiring that mixing zones granted by the department be specifically identified and requiring that mixing zones have:

- (a) the smallest practicable size;
- (b) a minimum practicable effect on water uses; and
- (c) definable boundaries;

(5) adopt rules implementing the nondegradation policy established in 75-5-303, including but not limited to rules that:

- (a) provide a procedure for department review and authorization of degradation;
- (b) establish criteria for the following:
 - (i) determining important economic or social development; and
 - (ii) weighing the social and economic importance to the public of allowing the proposed project against the cost to society associated with a loss of water quality;

(c) establish criteria for determining whether a proposed activity or class of activities, in addition to those activities identified in 75-5-317, will result in nonsignificant changes in water quality for any parameter in order that those activities are not required to undergo review under 75-5-303(3). These criteria must be established in a manner that generally:

- (i) equates significance with the potential for harm to human health, a beneficial use, or the environment;
- (ii) considers both the quantity and the strength of the pollutant;
- (iii) considers the length of time the degradation will occur;
- (iv) considers the character of the pollutant so that greater significance is associated with carcinogens and toxins that bioaccumulate or biomagnify and lesser significance is associated with substances that are less harmful or less persistent.

(d) provide that changes of nitrate as nitrogen in ground water are nonsignificant if the discharge will not cause degradation of surface water and the predicted concentration of nitrate as nitrogen at the boundary of the ground water mixing zone does not exceed:

- (i) 7.5 milligrams per liter from sources other than sewage;
- (ii) 5.0 milligrams per liter from sewage discharged from a system that does not use level two

1 treatment in an area where the ground water nitrate as nitrogen is 5.0 milligrams per liter or less;

2 (iii) 7.5 milligrams per liter from sewage discharged from a system using level two treatment, which
3 must be defined in the rules; or

4 (iv) 7.5 milligrams per liter from sewage discharged from a system in areas where the ground water
5 nitrate as nitrogen level exceeds 5.0 milligrams per liter primarily from sources other than human waste.

6 (6) to the extent practicable, ensure that the rules adopted under subsection (5) establish objective
7 and quantifiable criteria for various parameters. These criteria must, to the extent practicable, constitute
8 guidelines for granting or denying applications for authorization to degrade high-quality waters under the policy
9 established in 75-5-303(2) and (3).

10 (7) adopt rules to implement this section."
11

12 **Section 35.** Section 75-5-302, MCA, is amended to read:

13 **"75-5-302. Revising classifications in accordance with existing, present, and future most**
14 **beneficial uses of water bodies.** When the ~~board or~~ department is presented with facts indicating that a body
15 of water is not properly classified in accordance with its existing, present, and future most beneficial uses, the
16 department shall, within 90 days, evaluate the facts ~~and advise the board whether the water body is not~~
17 ~~properly classified.~~ If the ~~board~~ department determines that the water body is not properly classified, the ~~board~~
18 department shall initiate rulemaking to properly classify the water body in accordance with its existing, present,
19 and future most beneficial uses. ~~Board action~~ Action pursuant to this section is subject to 75-5-307."
20

21 **Section 36.** Section 75-5-303, MCA, is amended to read:

22 **"75-5-303. Nondegradation policy.** (1) Existing uses of state waters and the level of water quality
23 necessary to protect those uses must be maintained and protected.

24 (2) Unless authorized by the department under subsection (3) or exempted from review under 75-5-
25 317, the quality of high-quality waters must be maintained.

26 (3) The department may not authorize degradation of high-quality waters unless it has been
27 affirmatively demonstrated by a preponderance of evidence to the department that:

28 (a) degradation is necessary because there are no economically, environmentally, and technologically

feasible modifications to the proposed project that would result in no degradation;

(b) the proposed project will result in important economic or social development and that the benefit of the development exceeds the costs to society of allowing degradation of high-quality waters;

(c) existing and anticipated use of state waters will be fully protected; and

(d) the least degrading water quality protection practices determined by the department to be economically, environmentally, and technologically feasible will be fully implemented by the applicant prior to and during the proposed activity.

(4) The department shall issue a preliminary decision either denying or authorizing degradation and shall provide public notice and a 30-day comment period prior to issuing a final decision. The department's preliminary and final decisions must include:

(a) a statement of the basis for the decision; and

(b) a detailed description of all conditions applied to any authorization to degrade state waters, including, when applicable, monitoring requirements, required water protection practices, reporting requirements, effluent limits, designation of the mixing zones, the limits of degradation authorized, and methods of determining compliance with the authorization for degradation.

(5) An interested person wishing to challenge a final department decision may request a hearing before the ~~board-department~~ BOARD within 30 days of the final department decision. The contested case procedures of Title 2, chapter 4, part 6, apply to a hearing under this section.

(6) Periodically, but not more often than every 5 years, the department may review authorizations to degrade state waters. Following the review, the department may, after timely notice and opportunity for hearing, modify the authorization if the department determines that an economically, environmentally, and technologically feasible modification to the development exists. The decision by the department to modify an authorization may be appealed to the ~~board-department~~ BOARD.

(7) The ~~board-department~~ may not issue an authorization to degrade state waters that are classified as outstanding resource waters.

(8) The ~~board-department~~ shall adopt rules to implement this section."

Section 37. Section 75-5-304, MCA, is amended to read:

1 **"75-5-304. Adoption of standards -- pretreatment, effluent, performance.** (1) The ~~board~~
2 department shall:

- 3 (a) adopt pretreatment standards for wastewater discharged into a municipal disposal system;
4 (b) adopt effluent standards as defined in 75-5-103;
5 (c) adopt toxic effluent standards and prohibitions;
6 (d) establish standards of performance for new point source discharges; and
7 (e) adopt rules necessary to ensure the primacy of the department to regulate cooling water intake
8 structures under 33 U.S.C. 1326(b).

9 (2) In taking action under subsection (1), the ~~board~~ department shall ensure that the standards are
10 cost-effective and economically, environmentally, and technologically feasible."
11

12 **Section 38.** Section 75-5-305, MCA, is amended to read:

13 **"75-5-305. Adoption of requirements for treatment of wastes -- variance procedure -- appeals.**

14 (1) The ~~board~~ department may establish minimum requirements for the treatment of wastes. For cases in which
15 the federal government has adopted technology-based treatment requirements for a particular industry or
16 activity in 40 CFR, chapter I, subchapter N, the ~~board~~ department shall adopt those requirements by reference.
17 To the extent that the federal government has not adopted minimum treatment requirements for a particular
18 industry or activity, the ~~board~~ department may do so, through rulemaking, for parameters likely to affect
19 beneficial uses, ensuring that the requirements are cost-effective and economically, environmentally, and
20 technologically feasible. Except for the technology-based treatment requirements set forth in 40 CFR, chapter I,
21 subchapter N, minimum treatment may not be required to address the discharge of a parameter when the
22 discharge is considered nonsignificant under rules adopted pursuant to 75-5-301.

23 (2) (a) The ~~board~~ department shall establish minimum requirements for the control and disposal of
24 sewage from private and public buildings, including standards and procedures for variances from the
25 requirements.

26 (b) For gray water reuse systems, the ~~board~~ department shall establish rules that:

- 27 (i) allow the diversion of gray water from wastewater treatment systems and limit the amount of gray
28 water flow allowed by permit;

(ii) address the uses of gray water, including when and how gray water may be applied to land; and

(iii) include any other provisions that the ~~board~~-department considers necessary to ensure that gray water reuse systems comply with laws and regulations and protect public health and the environment.

(3) An applicant for a variance from minimum requirements adopted by a local board of health pursuant to 50-2-116 may appeal the local board of health's final decision to the department by submitting a written request for a hearing within 30 days after the decision. The written request must describe the activity for which the variance is requested, include copies of all documents submitted to the local board of health in support of the variance, and specify the reasons for the appeal of the local board of health's final decision.

(4) The department shall conduct a hearing on the request pursuant to Title 2, chapter 4, part 6. Within 30 days after the hearing, the department shall grant, conditionally grant, or deny the variance. The department shall base its decision on the ~~board's~~-department's standards for a variance.

(5) A decision of the department pursuant to subsection (4) is appealable to district court under the provisions of Title 2, chapter 4, part 7."

Section 39. Section 75-5-307, MCA, is amended to read:

"75-5-307. Hearings required for classification, formulation of standards, and rulemaking. (1)

Before streams are classified or standards established or modified or rules made, revoked, or modified, the ~~board~~-department shall hold a public hearing. Notice of the hearing specifying the waters concerned and the classification, standards, or modification of them and any rules proposed to be made, revoked, or modified ~~shall~~ must be published at least once a week for 3 consecutive weeks in a daily newspaper of general circulation in the area affected. Notice ~~shall also~~ must be mailed directly to persons the ~~board~~-department believes may be affected by the proposed action. The council ~~shall~~ must be given not less than 30 days prior to first publication to comment on the proposed action.

(2) At a hearing held under this section, the ~~board~~-department shall give all interested persons reasonable opportunity to submit data, views, or arguments, orally or in writing. The ~~board~~-department may make rules for the orderly conduct of the hearing but need not require compliance with the rules of evidence or procedure applicable to hearings held under 75-5-611."

1 **Section 40.** Section 75-5-308, MCA, is amended to read:

2 **"75-5-308. Short-term water authorizations -- water quality standards.** (1) Because these
3 activities promote the public interest, the department may, if necessary, authorize short-term exemptions from
4 the water quality standards for the following activities:

5 (a) emergency remediation activities that have been approved, authorized, or required by the
6 department; and

7 (b) application of a pesticide that is registered by the United States environmental protection agency
8 pursuant to 7 U.S.C. 136(a) when it is used to control nuisance aquatic organisms or to eliminate undesirable
9 and nonnative aquatic species.

10 (2) An authorization must include conditions that minimize, to the extent practicable, the magnitude of
11 any change in the concentration of the parameters affected by the activity and the length of time during which
12 any change may occur. The authorization must also include conditions that prevent significant risk to public
13 health and that ensure that existing and designated uses of state water are protected and maintained upon
14 completion of the activity. Authorizations issued under this section may include conditions that require water
15 quality or quantity monitoring and reporting. In the performance of its responsibilities under this section, the
16 department may negotiate operating agreements with other departments of state government that are intended
17 to minimize duplication in review of activities eligible for authorizations under this section.

18 (3) An authorization to use a pesticide does not relieve a person from the duty to comply with Title 80,
19 chapters 8 and 15. The department may not authorize an exemption from water quality standards for an activity
20 that requires a discharge permit under rules adopted by the board pursuant to 75-5-401."

21
22 **Section 41.** Section 75-5-310, MCA, is amended to read:

23 **"75-5-310. Site-specific standards of water quality for aquatic life.** (1) Notwithstanding any other
24 provisions of this chapter and except as provided in subsection (2), the ~~board~~ department, upon application by
25 a permit applicant, permittee, or person potentially liable under any state or federal environmental remediation
26 statute, shall adopt site-specific standards of water quality for aquatic life, both acute and chronic, as the
27 standards of water quality required under 75-5-301(2) and (3). The site-specific standards of water quality must
28 be developed in accordance with the procedures set forth in draft or final federal regulations, guidelines, or

1 criteria.

2 (2) If the department, based upon its review of an application submitted under subsection (1) and
3 sound scientific, technical, and available site-specific evidence, determines that the development of site-specific
4 criteria in accordance with draft or final federal regulations, guidelines, or criteria would not be protective of
5 beneficial uses, the department, within 90 days of the submission of an application under subsection (1), shall
6 notify the applicant in writing of its determination and of all additional procedures that the applicant is required
7 to comply with in the development of site-specific standards of water quality under this section. If there is a
8 dispute between the department and the applicant as to the additional procedures, the ~~board-department~~ BOARD
9 shall, on the request of the department or the applicant, hear and determine the dispute. The ~~board's~~
10 ~~department's~~ BOARD'S decision must be based on sound scientific, technical, and available site-specific
11 evidence."

12

13 **Section 42.** Section 75-5-311, MCA, is amended to read:

14 **"75-5-311. Local water quality districts -- ~~board-department~~ approval -- local water quality**
15 **programs.** (1) A county that establishes a local water quality district according to the procedures specified in
16 Title 7, chapter 13, part 45, shall, in consultation with the department, undertake planning and information-
17 gathering activities necessary to develop a proposed local water quality program.

18 (2) A county may implement a local water quality program in a local water quality district if the
19 program is approved by the ~~board-department~~ after a hearing conducted under 75-5-202.

20 (3) In approving a local water quality program, the ~~board-department~~ shall determine that the program
21 is consistent with the purposes and requirements of Title 75, chapter 5, and that the program will be effective in
22 protecting, preserving, and improving the quality of surface water and ground water, considering the
23 administrative organization, staff, and financial and other resources available to implement the program.

24 (4) Subject to the ~~board's~~ ~~department~~ approval, the commissioners and the governing bodies of cities
25 and towns that participate in a local water quality district may adopt local ordinances to regulate the following
26 specific facilities and sources of pollution:

27 (a) onsite wastewater disposal facilities;

28 (b) storm water runoff from paved surfaces;

(c) service connections between buildings and publicly owned sewer mains;

(d) facilities that use or store halogenated and nonhalogenated solvents, including hazardous substances that are referenced in 40 CFR 261.31, United States environmental protection agency hazardous waste numbers F001 through F005, as amended; and

(e) internal combustion engine lubricants.

(5) (a) For the facilities and sources of pollution included in subsection (4) and consistent with the provisions of subsection (6), the local ordinances may:

(i) be compatible with or more stringent or more extensive than the requirements imposed by 75-5-304, 75-5-305, and 75-5-401 through 75-5-404 and rules adopted under those sections to protect water quality, establish waste discharge permit requirements, and establish best management practices for substances that have the potential to pollute state waters;

(ii) provide for administrative procedures, administrative orders and actions, and civil enforcement actions that are consistent with 75-5-601 through 75-5-604, 75-5-611 through 75-5-616, 75-5-621, and 75-5-622 and rules adopted under those sections; and

(iii) provide for civil penalties not to exceed \$1,000 per violation, provided that each day of violation of a local ordinance constitutes a separate violation, and criminal penalties not to exceed \$500 per day of violation or imprisonment for not more than 30 days, or both.

(b) ~~Board~~ Department approval of an ordinance or local law that is more stringent than the comparable state law is subject to the provisions of 75-5-203.

(6) The local ordinances authorized by this section may not:

(a) duplicate the department's requirements and procedures relating to permitting of waste discharge sources and enforcement of water quality standards;

(b) regulate any facility or source of pollution to the extent that the facility or source is:

(i) required to obtain a permit or other approval from the department or federal government or is the subject of an administrative order, a consent decree, or an enforcement action pursuant to Title 75, chapter 5, part 4; Title 75, chapter 6; Title 75, chapter 10; the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9601 through 9675, as amended; or federal environmental, safety, or health statutes and regulations;

(ii) exempted from obtaining a permit or other approval from the department because the facility or source is required to obtain a permit or other approval from another state agency or is the subject of an enforcement action by another state agency; or

(iii) subject to the provisions of Title 80, chapter 8 or chapter 15.

(7) If the boundaries of a district are changed after the ~~board~~ department has approved the local water quality program for the district, the board of directors of the local water quality district shall submit a program amendment to the ~~board~~ department and obtain the ~~board's~~ department approval of the program amendment before implementing the local water quality program in areas that have been added to the district.

(8) The department shall monitor the implementation of local water quality programs to ensure that the programs are adequate to protect, preserve, and improve the quality of the surface water and ground water and are being administered in a manner consistent with the purposes and requirements of Title 75, chapter 5. ~~If the department finds that a local water quality program is not adequate to protect, preserve, and improve the quality of the surface water and ground water or is not being administered in a manner consistent with the purposes and requirements of Title 75, chapter 5, the department shall report to the board.~~

(9) If the ~~board~~ department determines that a local water quality program is inadequate to protect, preserve, and improve the quality of the surface water and ground water in the local water quality district or that the program is being administered in a manner inconsistent with Title 75, chapter 5, the ~~board~~ department shall give notice and conduct a hearing on the matter.

(10) If after the hearing the ~~board~~ department determines that the program is inadequate to protect, preserve, and improve the quality of the surface water and ground water in the local water quality district or that it is not being administered in a manner consistent with the purposes of Title 75, chapter 5, the ~~board~~ department shall require that necessary corrective measures be taken within a reasonable time, not to exceed 60 days.

(11) If an ordinance adopted under this section conflicts with a requirement imposed by the department's water quality program, the department's requirement supersedes the local ordinance.

(12) If the ~~board~~ department finds that, because of the complexity or magnitude of a particular water pollution source, the control of the source is beyond the reasonable capability of a local water quality district or may be more efficiently and economically performed at the state level, the ~~board may direct the department to~~

1 may assume and retain control over the source. A charge may not be assessed against the local water quality
2 district for that source. Findings made under this subsection may be based on the nature of the source involved
3 or on the source's relationship to the size of the community in which it is located."
4

5 **Section 43.** Section 75-5-312, MCA, is amended to read:

6 **"75-5-312. Temporary water quality standards.** (1) The ~~board-department~~ may, ~~upon~~
7 ~~recommendation of the department~~ on its own accord or upon a petition for rulemaking, as provided in 2-4-315,
8 by a person, including a permit applicant or permittee, temporarily modify a water quality standard for a specific
9 water body or segment on a parameter-by-parameter basis in those instances in which substantive information
10 indicates that the water body or segment is not supporting its designated uses. When the ~~board-department~~
11 adopts temporary standards, the goal is to improve water quality to the point at which all the beneficial uses
12 designated for that water body or segment are supported.

13 (2) As a condition for establishing temporary water quality standards for a particular water body or
14 segment, the department or the petitioner, as applicable, shall prepare a support document and a preliminary
15 implementation plan for use by the ~~board-department~~ in determining whether to adopt the proposed temporary
16 water quality standards. A person shall submit a support document and a preliminary implementation plan to
17 the department for its review at least 60 days prior to filing a petition with the ~~board-department~~ requesting the
18 adoption of temporary water quality standards.

19 (3) The support document prepared by the department or the petitioner, as applicable, must describe:

- 20 (a) the chemical, biological, and physical condition of the water body or segment;
21 (b) the specific water quality limiting factors affecting the water body or segment;
22 (c) the existing water quality standards that are not being achieved;
23 (d) the temporary modifications to the existing water quality standards being requested;
24 (e) existing beneficial uses; and
25 (f) the designated uses considered attainable in the absence of the water quality limiting factors.

26 (4) The preliminary implementation plan prepared by the department or the petitioner, as applicable,
27 must contain:

- 28 (a) a description of the proposed actions that will eliminate the water quality limiting factors identified

1 in subsection (3)(b) to the extent considered achievable; and

2 (b) a schedule for implementing the proposed actions that ensures that the existing water quality
3 standards for the parameter or parameters at issue are met as soon as reasonably practicable.

4 (5) Within 30 days after the ~~board's~~ department's adoption of temporary water quality standards, the
5 department or the petitioner, as applicable, shall:

6 (a) modify the preliminary implementation plan and schedule to reflect the requirements and
7 timeframe adopted by the ~~board~~ department for the temporary standards; and

8 (b) develop a detailed work plan describing the implementation activities that will be conducted during
9 the first field season of the temporary standards. The work plan must be approved by the director of the
10 department.

11 (6) By March 1 of each year that the temporary water quality standards are in effect, the department
12 or the petitioner, as applicable, shall submit a detailed work plan describing the implementation activities that
13 will be conducted during that season. The annual work plans must be approved by the director of the
14 department. The department shall maintain copies of the implementation plan, schedule, and annual work plans
15 and any modifications to those plans and schedule.

16 (7) Upon the ~~board's~~ department's adoption of a temporary water quality standard, the department
17 shall ensure that reasonable conditions and limitations designed to achieve compliance with the implementation
18 plan are established in appropriate discharge permits.

19 (8) (a) A temporary modification of a water quality standard may not result in adverse impacts to
20 existing beneficial uses or be established for a total period longer than 20 years.

21 (b) During the period of the temporary modification, the ~~board~~ department may not allow a discharge
22 that will cause overall water quality to become worse than the overall quality of the water body or segment prior
23 to the discharge.

24 (9) If a state water is designated as having temporary standards, the department shall report ~~to the~~
25 ~~board~~ at least every 3 years ~~or upon request of the board~~ regarding whether adequate efforts have been made
26 to implement the plans submitted as the basis for the temporary standards.

27 (10) The ~~board~~ department shall review the temporary standards and implementation plan at least
28 every 3 years at a public hearing for which notice and an opportunity for comment have been provided. During

1 this review, the ~~board~~department shall consider the progress made in restoring water quality to a level that
2 achieves the goal of the temporary water quality standards. The ~~board~~department may terminate or modify the
3 temporary standards based on information submitted at the time of review.

4 (11) The ~~board~~department shall terminate a temporary standard for a parameter if:

5 (a) values for the modified parameter or parameters improve to conditions that support all designated
6 uses for that classification;

7 (b) the state water for which the temporary standard is adopted is reclassified as provided for in 75-5-
8 302; or

9 (c) the plan submitted in support of the temporary water quality standard is not being implemented
10 according to the plan's schedule or modifications to that plan or schedule made by the ~~board~~or department.

11 (12) The ~~board or the~~ department may modify the implementation plan if there is convincing evidence
12 that the plan needs modification.

13 (13) If a temporary standard for a parameter in a particular state water is terminated because the plan
14 submitted in support of the temporary water quality standard is not being implemented according to the plan's
15 schedule or modifications to that schedule made by the ~~board~~or department, a person may request a new
16 temporary standard by submitting both a petition for rulemaking and an implementation plan that meet the
17 requirements of subsection (4). However, the ~~board~~department may not adopt another temporary standard for
18 the parameter in the state water that would cumulatively be in effect for a total period longer than 20 years for
19 the parameter in the state water."
20

21 **Section 44.** Section 75-5-313, MCA, is amended to read:

22 **"75-5-313. Nutrient standards variances -- individual, general, and alternative.** (1) The
23 department shall, on a case-by-case basis, approve the use of an individual nutrient standards variance in a
24 discharge permit based upon adequate justification pursuant to subsection (2) that attainment of the base
25 numeric nutrient standards is precluded due to economic impacts, limits of technology, or both.

26 (2) (a) The department, in consultation with the nutrient work group, shall develop guidelines for
27 individual nutrient standards variances to ensure that the economic impacts from base numeric nutrient
28 standards on public and private systems are equally and adequately addressed. In developing those guidelines,

1 the department and the nutrient work group shall consider economic impacts appropriate for application within
2 Montana, acknowledging that advanced treatment technologies for removing nutrients will result in significant
3 and widespread economic impacts.

4 (b) The department shall consult with the nutrient work group prior to recommending base numeric
5 nutrient standards ~~to the board~~ and shall continue to consult with the nutrient work group in implementing
6 individual nutrient standards variances.

7 (3) The department shall review each application for an individual nutrient standards variance on a
8 case-by-case basis to determine if there are reasonable alternatives, such as trading, permit compliance
9 schedules, or the alternatives provided in subsections (5), (10), and (11), that preclude the need for the
10 individual nutrient standards variance.

11 (4) Individual nutrient standards variances approved by the department become effective and may be
12 incorporated into a permit only after a public hearing and adoption by the department under the rulemaking
13 procedures of Title 2, chapter 4, part 3.

14 (5) (a) Because the treatment of wastewater to base numeric nutrient standards would result in
15 substantial and widespread economic impacts on a statewide basis, a permittee who meets the requirements
16 established in subsection (5)(b) may, subject to subsection (6), apply for a general nutrient standards variance.

17 (b) The department shall approve the use of a general nutrient standards variance for permittees with
18 wastewater treatment facilities that discharge to surface water:

19 (i) in an amount greater than or equal to 1 million gallons per day of effluent if the permittee treats the
20 discharge to, at a minimum, 1 milligram total phosphorus per liter and 10 milligrams total nitrogen per liter,
21 calculated as a monthly average during the period in which the base numeric nutrient standards apply;

22 (ii) in an amount less than 1 million gallons per day of effluent if the permittee treats the discharge to,
23 at a minimum, 2 milligrams total phosphorus per liter and 15 milligrams total nitrogen per liter, calculated as a
24 monthly average during the period in which the base numeric nutrient standards apply; or

25 (iii) from lagoons that were not designed to actively remove nutrients if the permittee maintains the
26 performance of the lagoon at a level equal to the performance of the lagoon on October 1, 2011.

27 (6) (a) The monthly average concentrations for total nitrogen and total phosphorus in subsection
28 (5)(b) are the highest concentrations allowed in each category and remain in effect until May 31, 2016.

(b) Categories and concentrations in subsection (5)(b) must be adopted by rule by May 31, 2016.

(7) (a) Immediately after May 31, 2016, and every 3 years thereafter, the department, in consultation with the nutrient work group, shall revisit and update the concentration levels provided in subsection (5)(b).

(b) If more cost-effective and efficient treatment technologies are available, the concentration levels provided in subsection (5)(b) must be updated pursuant to subsection (7)(c) to reflect those changes.

(c) The updates become effective and may be incorporated into a permit only after a public hearing and adoption by the department under the rulemaking procedures of Title 2, chapter 4, part 3.

(8) An individual, general, or alternative nutrient standards variance may be established for a period not to exceed 20 years and must be reviewed by the department every 3 years from the date of adoption to ensure that the justification for its adoption remains valid.

(9) (a) Permittees receiving an individual, general, or alternative nutrient standards variance shall evaluate current facility operations to optimize nutrient reduction with existing infrastructure and shall analyze cost-effective methods of reducing nutrient loading, including but not limited to nutrient trading without substantial investment in new infrastructure.

(b) The department may request that a permittee provide the results of an optimization study and nutrient reduction analysis to the department within 2 years of receiving an individual, general, or alternative nutrient variance.

(10) (a) A permittee may request that the department provide an alternative nutrient standards variance if the permittee demonstrates that achieving nutrient concentrations established for an individual or general nutrient standards variance would result in an insignificant reduction of instream nutrient loading.

(b) A permittee receiving an alternative nutrient standards variance shall comply with the requirements of subsections (8) and (9) and shall demonstrate that the permittee's contribution to nutrient concentrations in the watershed continues to remain insignificant.

(11) The department shall encourage the use of alternative effluent management methods to reduce instream nutrient loading, including reuse, recharge, land application, and trading.

(12) On or before July 1 of each year, the department, in consultation with the nutrient work group, shall report to the water policy committee established in 5-5-231 by providing a summary of the status of the base numeric nutrient standards, the nutrient standards variances, and the implementation of those standards

1 and variances, including estimated economic impacts.

2 (13) On or before September 1 of each year preceding the convening of a regular session of the
3 legislature, the department, in consultation with the nutrient work group, shall summarize the two most recent
4 reports provided under subsection (12) and submit to the water policy committee established in 5-5-231 this
5 final summary in accordance with 5-11-210."

6

7 **Section 62.** Section 75-5-314, MCA, is amended to read:

8 **~~"75-5-314. Confidentiality of base numeric standards and nutrient standards variances. (1)~~**

9 ~~Except as provided in 80-15-108 and subsection (2) of this section, information concerning base numeric~~
10 ~~nutrient standards or nutrient standards variances that is furnished to the board or department or that is~~
11 ~~obtained by either of them the department is a matter of public record and open to public use.~~

12 ~~(2) Information unique to the owner or operator of a source of a discharge related to base numeric~~
13 ~~nutrient standards or nutrient standards variances that would, if disclosed, reveal methods or processes entitled~~
14 ~~to protection as trade secrets as defined in 30-14-402 must be maintained as confidential if so determined by a~~
15 ~~court of competent jurisdiction.~~

16 ~~(3) (a) The owner or operator shall file a declaratory judgment action to establish the existence of a~~
17 ~~trade secret if the owner or operator wishes the information to remain confidential.~~

18 ~~(b) The department must be served in the action and may intervene as a party.~~

19 ~~(c) Information not intended to be public when submitted to the board or department must be~~
20 ~~submitted in writing and clearly marked as confidential."~~

21

22 **Section 45.** Section 75-5-315, MCA, is amended to read:

23 **"75-5-315. Outstanding resource waters -- statement of purpose.** (1) The legislature,
24 understanding the requirements of applicable federal law and the uniqueness of Montana's water resource,
25 recognizes that certain state waters are of such environmental, ecological, or economic value that the state
26 should, upon a showing of necessity, prohibit, to the greatest extent practicable, changes to the existing water
27 quality of those waters. Outstanding resource waters must be afforded the greatest protection feasible under
28 state law, after thorough examination.

(2) The purpose of 75-5-316 and this section is to provide this protection, when necessary, and to provide guidance to the ~~board~~department in establishing rules to accomplish that level of protection."

Section 46. Section 75-5-316, MCA, is amended to read:

"75-5-316. Outstanding resource water classification -- rules -- criteria -- limitations -- procedure -- definition. (1) As provided under the provisions of 75-5-301 and this section, the ~~board~~department may adopt rules regarding the classification of waters as outstanding resource waters.

(2) The department may not:

(a) grant an authorization to degrade under 75-5-303 in outstanding resource waters; or

(b) allow a new or increased point source discharge that would result in a permanent change in the water quality of an outstanding resource water.

(3) (a) A person may petition the ~~board~~department for rulemaking to classify state waters as outstanding resource waters. The ~~board~~department shall initially review a petition against the criteria identified in subsection (3)(c) to determine whether the petition contains sufficient credible information for the ~~board~~department to accept the petition.

(b) The ~~board~~department may reject a petition without further review if it determines that the petition does not contain the sufficient credible information required by subsection (3)(a). If the ~~board~~department rejects a petition under this subsection (3)(b), it shall specify in writing the reasons for the rejection and the petition's deficiencies.

(c) The ~~board~~department may not adopt a rule classifying state waters as outstanding resource waters until it accepts a petition and makes a written finding containing the provisions enumerated in subsection (3)(d) that, based on a preponderance of the evidence:

(i) the waters identified in the petition constitute an outstanding resource based on the criteria provided in subsection (4);

(ii) the increased protection under the classification is necessary to protect the outstanding resource identified under subsection (3)(a) because of a finding that the outstanding resource is at risk of having one or more of the criteria provided in subsection (4) compromised as a result of pollution; and

(iii) classification as an outstanding resource water is necessary because of a finding that there is no

1 other effective process available that will achieve the necessary protection.

2 (d) The written finding provided for in subsection (3)(c) must:

3 (i) identify the criteria provided in subsection (4) that ~~the board believes serve~~ serve as justification for
4 the determination that the water is an outstanding resource;

5 (ii) specifically identify the criteria that are at risk and explain why those criteria are at risk; and

6 (iii) specifically explain why other available processes, including the requirements of 75-5-303, will not
7 achieve the necessary protection.

8 (4) The ~~board~~ department shall consider the following criteria in determining whether certain state
9 waters are outstanding resource waters. However, the ~~board~~ department may determine that compliance with
10 one or more of these criteria is insufficient to warrant classification of the water as an outstanding resource
11 water. The ~~board~~ department shall consider:

12 (a) whether the waters have been designated as wild and scenic;

13 (b) the presence of endangered or threatened species in the waters;

14 (c) the presence of an outstanding recreational fishery in the waters;

15 (d) whether the waters provide the only source of suitable water for a municipality or industry;

16 (e) whether the waters provide the only source of suitable water for domestic water supply; and

17 (f) other factors that indicate outstanding environmental or economic values not specifically
18 mentioned in this subsection (4).

19 (5) Before accepting a petition, the ~~board~~ department shall:

20 (a) publish a notice and brief description of the petition in a daily newspaper of general circulation in
21 the area affected and make copies of the proposal available to the public. The cost of publication must be paid
22 by the petitioner.

23 (b) provide for a 30-day written public comment period regarding whether the petition contains
24 sufficient credible information, as provided in subsection (3)(b), prior to the hearing required in subsection
25 (5)(c);

26 (c) hold a public hearing regarding the petition and its contents and allow further written and oral
27 testimony at the hearing;

28 (d) issue a proposed decision, including:

- 1 (i) the written finding provided for in subsection (3)(c); and
- 2 (ii) the ~~board's~~ department's acceptance or rejection of the petition;
- 3 (e) provide for a 30-day public comment period regarding the ~~board's~~ department's proposed
- 4 decision; and
- 5 (f) issue a final decision on acceptance or rejection of the petition, which must include a response to
- 6 comments ~~that were~~ received by the ~~board,~~ department, and make copies of this decision available to the
- 7 public.
- 8 (6) (a) After acceptance of a petition, the ~~board shall direct the department to~~ shall prepare an
- 9 environmental impact statement, as provided under Title 75, chapter 1, part 2, and this section.
- 10 (b) (i) The petitioner is responsible for all of the costs associated with gathering and compiling data
- 11 and information, and completing the environmental impact statement.
- 12 (ii) Before the department may initiate work on the environmental impact statement, the petitioner shall
- 13 pay the estimated cost of completing the environmental impact statement, as determined by the department.
- 14 (iii) Upon completion of the environmental impact statement, the petitioner shall pay the department
- 15 any costs that exceeded the estimated cost. If the cost of the environmental impact statement was less than the
- 16 estimated cost paid by the petitioner, the department shall reimburse the difference to the petitioner.
- 17 (iv) The ~~board~~ department may not grant or deny a petition until full payment for the environmental
- 18 impact statement ~~has been~~ is received ~~by the department.~~
- 19 (7) The ~~board~~ department shall consult with other relevant state agencies and county governments
- 20 when reviewing outstanding resource water classification petitions.
- 21 (8) (a) After completion of an environmental impact statement and consultation with state agencies
- 22 and local governments, the ~~board~~ department may deny an accepted outstanding resource water classification
- 23 petition if it finds that:
- 24 (i) the requirements of subsection (3)(c) have not been met; or
- 25 (ii) based on information available to the ~~board~~ department from the environmental impact statement or
- 26 otherwise, approving the outstanding resource waters classification petition would cause significant adverse
- 27 environmental, social, or economic impacts.
- 28 (b) If the ~~board~~ department denies the petition, it shall identify its reasons for petition denial.

(c) If the ~~board~~ department grants the petition, the ~~board~~ department shall initiate rulemaking to classify the waters as outstanding resource waters.

(9) A rule classifying state waters as outstanding resource waters under this section may be adopted but is not effective until approved by the legislature.

(10) The ~~board~~ department may not postpone or deny an application for an authorization to degrade state waters under 75-5-303 based on pending:

(a) ~~board~~ department action on an outstanding resource water classification petition regarding those waters; or

(b) legislative approval of ~~board~~ department action designating those waters as outstanding resource waters.

(11) As used in this section, "petitioner" means an individual, corporation, partnership, firm, association, or other private or public entity that petitions the ~~board~~ department to adopt rules to classify waters as outstanding resource waters."

Section 47. Section 75-5-318, MCA, is amended to read:

"75-5-318. Short-term water quality standards for turbidity. (1) Upon authorization by the department or the department of fish, wildlife, and parks pursuant to subsection (4), the short-term water quality standards for total suspended sediment and turbidity resulting from stream-related construction activities or stream enhancement projects are the narrative standards for total suspended sediment adopted by the ~~board~~ department under 75-5-301. If a short-term narrative standard is authorized under this section, the numeric standard for turbidity adopted by the ~~board~~ department under 75-5-301 does not apply to the affected water body during the term of the narrative standard.

(2) The department shall review each application for short-term standards on a case-by-case basis to determine whether there are reasonable alternatives that preclude the need for a narrative standard. If the department determines that the numeric standard for turbidity adopted ~~by the board~~ under 75-5-301 cannot be achieved during the term of the activity and that there are no reasonable alternatives to achieve the numeric standard, the department may authorize the use of a narrative standard for a specified term.

(3) Each authorization issued by the department must include conditions that minimize, to the extent

practicable, the magnitude of any change in water quality and the length of time during which any change may occur. The authorization must also include site-specific conditions that ensure that the activity is not harmful, detrimental, or injurious to public health and the uses of state waters and that ensure that existing and designated beneficial uses of state water are protected and maintained upon completion of the activity. The department may not authorize short-term narrative standards for activities requiring a discharge permit under rules adopted by the board pursuant to 75-5-401. Authorizations issued under this section may include conditions that require water quality or quantity monitoring and reporting.

(4) In the performance of its responsibilities under this section, the department may negotiate operating agreements with other departments of state government that are intended to minimize duplication in review of activities eligible for authorizations under this section. The department of fish, wildlife, and parks may, in accordance with subsections (1), (2), and (3), authorize short-term water quality standards for total suspended sediment and turbidity for any stream construction project that it reviews under Title 75, chapter 7, part 1, or Title 87, chapter 5, part 5."

Section 48. Section 75-5-401, MCA, is amended to read:

"75-5-401. (Temporary) Board rules -- Rules for permits -- ground water exclusions. (1) Except as provided in subsection (5), the ~~board~~department shall adopt rules:

(a) governing application for permits to discharge sewage, industrial wastes, or other wastes into state waters, including rules requiring the filing of plans and specifications relating to the construction, modification, or operation of disposal systems;

(b) governing the issuance, denial, modification, or revocation of permits. The ~~board~~department may not require a permit for a water conveyance structure or for a natural spring if the water discharged to state waters does not contain industrial waste, sewage, or other wastes. Discharge to surface water of ground water that is not altered from its ambient quality does not constitute a discharge requiring a permit under this part if:

(i) the discharge does not contain industrial waste, sewage, or other wastes;

(ii) the water discharged does not cause the receiving waters to exceed applicable standards for any parameters; and

(iii) to the extent that the receiving waters in their ambient state exceed standards for any parameters,

1 the discharge does not increase the concentration of the parameters.

2 (c) governing authorization to discharge under a general permit for storm water associated with
3 construction activity. These rules must allow an owner or operator to notify the department of the intent to be
4 covered under the general permit. This notice of intent must include a signed pollution prevention plan that
5 requires the applicant to implement best management practices in accordance with the general permit. The
6 rules must authorize the owner or operator to discharge under the general permit on receipt of the notice and
7 plan by the department.

8 (2) The rules must allow the issuance or continuance of a permit only if the department finds that
9 operation consistent with the limitations of the permit will not result in pollution of any state waters, except that
10 the rules may allow the issuance of a temporary permit under which pollution may result if the department
11 ensures that the permit contains a compliance schedule designed to meet all applicable effluent standards and
12 water quality standards in the shortest reasonable period of time.

13 (3) The rules must provide that the department may revoke a permit if the department finds that the
14 holder of the permit has violated its terms, unless the department also finds that the violation was accidental
15 and unforeseeable and that the holder of the permit corrected the condition resulting in the violation as soon as
16 was reasonably possible.

17 (4) The ~~board~~department may adopt rules governing reclamation of sites disturbed by construction,
18 modification, or operation of permitted activities for which a bond is voluntarily filed by a permittee pursuant to
19 75-5-405, including rules for the establishment of criteria and procedures governing release of the bond or other
20 surety and release of portions of a bond or other surety.

21 (5) Discharges of sewage, industrial wastes, or other wastes into state ground waters from the
22 following activities or operations are not subject to the ground water permit requirements adopted under
23 subsections (1) through (4):

24 (a) discharges or activities at wells injecting fluids associated with oil and gas exploration and
25 production regulated under the federal underground injection control program;

26 (b) disposal by solid waste management systems licensed pursuant to 75-10-221;

27 (c) individuals disposing of their own normal household wastes on their own property;

28 (d) hazardous waste management facilities permitted pursuant to 75-10-406;

(e) water injection wells, reserve pits, and produced water pits used in oil and gas field operations and approved pursuant to Title 82, chapter 11;

(f) agricultural irrigation facilities;

(g) storm water disposal or storm water detention facilities;

(h) subsurface disposal systems for sanitary wastes serving individual residences;

(i) in situ mining of uranium facilities controlled under Title 82, chapter 4, part 2;

(j) mining operations subject to operating permits or exploration licenses in compliance with The Strip and Underground Mine Reclamation Act, Title 82, chapter 4, part 2, or the metal mine reclamation laws, Title 82, chapter 4, part 3; or

(k) projects reviewed under the provisions of the Montana Major Facility Siting Act, Title 75, chapter 20.

(6) Notwithstanding the provisions of 75-5-301(4), mixing zones for activities excluded from permit requirements under subsection (5) of this section must be established by the permitting agency for those activities in accordance with 75-5-301(4)(a) through (4)(c).

(7) Notwithstanding the exclusions set forth in subsection (5), any excluded source that the department determines may be causing or is likely to cause violations of ground water quality standards may be required to submit monitoring information pursuant to 75-5-602.

(8) The ~~board~~department may adopt rules identifying other activities or operations from which a discharge of sewage, industrial wastes, or other wastes into state ground waters is not subject to the ground water permit requirements adopted under subsections (1) through (4).

(9) The ~~board~~department may adopt rules authorizing general permits for categories of point source discharges. The rules may authorize discharge upon issuance of an individual authorization by the department or upon receipt of a notice of intent to be covered under the general permit.

75-5-401. (Effective on occurrence of contingency) ~~Board rules~~ Rules for permits -- ground water exclusions. (1) Except as provided in subsection (5), the ~~board~~department shall adopt rules:

(a) governing application for permits to discharge sewage, industrial wastes, or other wastes into state waters, including rules requiring the filing of plans and specifications relating to the construction, modification, or operation of disposal systems;

(b) governing the issuance, denial, modification, or revocation of permits. The ~~board~~department may not require a permit for a water conveyance structure or for a natural spring if the water discharged to state waters does not contain industrial waste, sewage, or other wastes. Discharge to surface water or ground water that is not altered from its ambient quality does not constitute a discharge requiring a permit under this part if:

(i) the discharge does not contain industrial waste, sewage, or other wastes;

(ii) the water discharged does not cause the receiving waters to exceed applicable standards for any parameters; and

(iii) to the extent that the receiving waters in their ambient state exceed standards for any parameters, the discharge does not increase the concentration of the parameters.

(c) governing authorization to discharge under a general permit for storm water associated with construction activity. These rules must allow an owner or operator to notify the department of the intent to be covered under the general permit. This notice of intent must include a signed pollution prevention plan that requires the applicant to implement best management practices in accordance with the general permit. The rules must authorize the owner or operator to discharge under the general permit on receipt of the notice and plan by the department.

(2) The rules must allow the issuance or continuance of a permit only if the department finds that operation consistent with the limitations of the permit will not result in pollution of any state waters, except that the rules may allow the issuance of a temporary permit under which pollution may result if the department ensures that the permit contains a compliance schedule designed to meet all applicable effluent standards and water quality standards in the shortest reasonable period of time.

(3) The rules must provide that the department may revoke a permit if the department finds that the holder of the permit has violated its terms, unless the department also finds that the violation was accidental and unforeseeable and that the holder of the permit corrected the condition resulting in the violation as soon as was reasonably possible.

(4) The ~~board~~department may adopt rules governing reclamation of sites disturbed by construction, modification, or operation of permitted activities for which a bond is voluntarily filed by a permittee pursuant to 75-5-405, including rules for the establishment of criteria and procedures governing release of the bond or other surety and release of portions of a bond or other surety.

(5) Discharges of sewage, industrial wastes, or other wastes into state ground waters from the following activities or operations are not subject to the ground water permit requirements adopted under subsections (1) through (4):

(a) discharges or activities at wells injecting fluids associated with oil and gas exploration and production regulated under the federal underground injection control program;

(b) disposal by solid waste management systems licensed pursuant to 75-10-221;

(c) individuals disposing of their own normal household wastes on their own property;

(d) hazardous waste management facilities permitted pursuant to 75-10-406;

(e) water injection wells, reserve pits, and produced water pits used in oil and gas field operations and approved pursuant to Title 82, chapter 11;

(f) agricultural irrigation facilities;

(g) storm water disposal or storm water detention facilities;

(h) subsurface disposal systems for sanitary wastes serving individual residences;

(i) in situ mining of uranium facilities controlled under Title 82, chapter 4, part 2;

(j) mining operations subject to operating permits or exploration licenses in compliance with The Strip and Underground Mine Reclamation Act, Title 82, chapter 4, part 2, or the metal mine reclamation laws, Title 82, chapter 4, part 3;

(k) projects reviewed under the provisions of the Montana Major Facility Siting Act, Title 75, chapter 20; or

(l) a carbon dioxide injection well for which a permit has been issued pursuant to Title 82, chapter 11, part 1.

(6) Notwithstanding the provisions of 75-5-301(4), mixing zones for activities excluded from permit requirements under subsection (5) of this section must be established by the permitting agency for those activities in accordance with 75-5-301(4)(a) through (4)(c).

(7) Notwithstanding the exclusions set forth in subsection (5), any excluded source that the department determines may be causing or is likely to cause violations of ground water quality standards may be required to submit monitoring information pursuant to 75-5-602.

(8) The ~~board~~department may adopt rules identifying other activities or operations from which a

1 discharge of sewage, industrial wastes, or other wastes into state ground waters is not subject to the ground
2 water permit requirements adopted under subsections (1) through (4).

3 (9) The ~~board~~ department may adopt rules authorizing general permits for categories of point source
4 discharges. The rules may authorize discharge upon issuance of an individual authorization by the department
5 or upon receipt of a notice of intent to be covered under the general permit."

6
7 **Section 49.** Section 75-5-402, MCA, is amended to read:

8 **"75-5-402. Duties of department.** The department shall:

9 (1) issue, suspend, revoke, modify, or deny permits to discharge sewage, industrial wastes, or other
10 wastes into state waters, consistently with rules made by the ~~board~~ department;

11 (2) examine plans and other information needed to determine whether a permit should be issued or
12 suggest changes in plans as a condition to the issuance of a permit;

13 (3) clearly specify in any permit any limitations imposed as to the volume, strength, and other
14 significant characteristics of the waste to be discharged; and

15 (4) establish as conditions to the issuance of permits for which a performance bond or other surety is
16 filed under 75-5-405 certain reclamation requirements sufficient to prevent pollution of state waters during and
17 after operation of the project or activity for which a permit is issued."

18
19 **Section 68.** Section 75-5-403, MCA, is amended to read:

20 ~~"75-5-403. Denial or modification of permit -- time for review of permit application. (1) The~~
21 ~~department shall review for completeness all applications for new permits within 60 days of the receipt of the~~
22 ~~initial application and within 30 days of receipt of responses to notices of deficiencies. The initial completeness~~
23 ~~notice must note all major deficiency issues, based on the information submitted. The department and the~~
24 ~~applicant may extend these timeframes, by mutual agreement, by not more than 75 days. An application is~~
25 ~~considered complete unless the applicant is notified of a deficiency within the appropriate review period.~~

26 ~~(2) If the department denies an application for a permit or modifies a permit, the department shall~~
27 ~~give written notice of its action to the applicant or holder and the applicant or holder may request a hearing~~
28 ~~before the board department, in the manner stated in 75-5-611, for the purpose of petitioning the board~~

~~department to reverse or modify the action of the department. The hearing must be held within 30 days after receipt of written request. After the hearing, the board department shall affirm, modify, or reverse the action of the department. If the holder does not request a hearing before the board, modification of a permit is effective 30 days after receipt of notice by the holder unless the department specifies a later date. If the holder does request a hearing before the board, an order modifying the permit is not effective until 20 days after receipt of notice of the action of the board department."~~

Section 69. Section 75-5-404, MCA, is amended to read:

~~"75-5-404. **Suspension or revocation of permit -- procedure.** If the department suspends or revokes a permit because it has reason to believe that the holder has violated this chapter, the department may specify that the suspension or revocation is effective immediately if the department finds that the violation is likely to continue and will cause pollution, the harmful effects of which will not be remedied immediately on the cessation of the violation. Upon petition by the holder of the permit, the board department shall grant the holder a hearing, to be conducted in the manner specified in 75-5-611, and shall issue an order affirming, modifying, or reversing the action of the department. The order of the board shall be is effective immediately unless the board department directs otherwise."~~

Section 50. Section 75-5-502, MCA, is amended to read:

~~"75-5-502. **Board Department authorized to accept loans and grants.** The board department may accept loans and grants from the federal government and other sources to carry out the provisions of this chapter."~~

Section 51. Section 75-5-514, MCA, is amended to read:

~~"75-5-514. **When board department to establish rates and collect charges.** (1) In the event a municipality or other entity operating sewage systems fails, neglects, or refuses when required by the department to adopt the system of charges and rates authorized by 75-5-511, the board department may adopt a system of charges and rates as provided for in 75-5-511(1) and collect, administer, and apply such revenues for the purposes of 75-5-512.~~

(2) In lieu of proceeding in the manner set forth in subsection (1) of this section, the department may institute proceedings at law or in equity to enforce compliance with or restrain violations of 75-5-511 through 75-5-513."

Section 52. Section 75-5-515, MCA, is amended to read:

"75-5-515. Determination of costs payable by users. In determining the amount of treatment works costs to be paid by recipients of treatment works services, the municipality or other entity operating sewage systems or, if applicable, the ~~board~~ department shall consider the strength, volume, types, and delivery flow rate characteristics of the waste; the nature, location, and type of treatment works; the receiving waters; and ~~such other factors as~~ deemed necessary."

Section 53. Section 75-5-516, MCA, is amended to read:

"75-5-516. Fees authorized for recovery -- process -- rulemaking. (1) Except as provided in subsections (12) and (13), the ~~board~~ department shall by rule prescribe fees ~~to be assessed by the department~~ that are sufficient to cover the ~~board's and~~ department's documented costs, both direct and indirect, of:

(a) reviewing and acting upon an application for a permit, permit modification, permit renewal, certificate, license, or other authorization required by rule under 75-5-201 or 75-5-401;

(b) reviewing and acting upon a petition for a degradation allowance under 75-5-303;

(c) reviewing and acting upon an application for a permit, certificate, license, or other authorization for which an exclusion is provided by rule from the permitting requirements established under 75-5-401;

(d) enforcing the terms and conditions of a permit or authorization identified in subsections (1)(a) through (1)(c). If the permit or authorization is not issued, the department shall return this portion of any application fee to the applicant.

(e) conducting compliance inspections and monitoring effluent and ambient water quality; and

(f) preparing water quality rules or guidance documents.

(2) Except as provided in subsection (12), the rules promulgated ~~by the board~~ under this section must include:

(a) a fee on all applications for permits or authorizations, as identified in subsections (1)(a) through

(1)(c), that recovers to the extent permitted by this subsection (2) the department's cost of reviewing and acting upon the applications. This fee may not be more than \$5,000 per discharge point for an application addressed under subsection (1), except that an application with multiple discharge points may be assessed a lower fee for those points according to ~~board~~-rule.

(b) an annual fee to be assessed according to the volume and concentration of waste discharged into state waters. The annual fee may not be more than \$3,000 per million gallons discharged per day on an annual average for any activity under permit or authorization, as described in subsection (1), except that:

(i) a permit or authorization with multiple discharge points may be assessed a lower fee for those points according to ~~board~~-rule; and

(ii) a facility that consistently discharges effluent at less than or equal to one-half of its effluent limitations and that is in compliance with other permit requirements, using the previous calendar year's discharge data, is entitled to a 25% reduction in its annual permit fee. Proportionate reductions of up to 25% of the permit fee may be given to facilities that consistently discharge effluent at levels between 50% and 100% of their effluent limitations. However, a new permittee is not eligible for a fee reduction in its first year of operation, and a permittee with a violation of any effluent limit during the previous calendar year is not eligible for a fee reduction for the following year.

(3) To the extent permitted under subsection (2)(b), the annual fee must be sufficient to pay the department's estimated cost of conducting all tasks described under subsection (1) after subtracting:

(a) the fees collected under subsection (2)(a);

(b) state general fund appropriations for functions administered under this chapter; and

(c) federal grants for functions administered under this chapter.

(4) For purposes of subsection (3), the department's estimated cost of conducting the tasks described under subsection (1) is the amount authorized by the legislature for the department's water quality discharge permit programs.

(5) If the applicant or holder fails to pay a fee assessed under this section or rules adopted under this section within 90 days after the date established by rule for fee payment, the department may:

(a) impose an additional assessment consisting of not more than 20% of the fee plus interest on the required fee computed as provided in 15-1-216; or

(b) suspend the permit or exclusion. The department may lift the suspension at any time up to 1 year after the suspension occurs if the holder has paid all outstanding fees, including all penalties, assessments, and interest imposed under subsection (5)(a).

(6) Fees collected pursuant to this section must be deposited in an account in the special revenue fund type pursuant to 75-5-517.

(7) The department shall give written notice to each person assessed a fee under this section of the amount of fee that is assessed and the basis for the department's calculation of the fee. This notice must be issued at least 30 days prior to the due date for payment of the assessment.

(8) A holder of or an applicant for a permit, certificate, or license may appeal the department's fee assessment to the ~~board-department~~ BOARD within 20 days after receiving written notice of the department's fee determination under subsection (7). The appeal to the ~~board~~ must include a written statement detailing the reasons that the permitholder or applicant considers the department's fee assessment to be erroneous or excessive.

(9) If part of the department's fee assessment is not in dispute in an appeal filed under subsection (8), the undisputed portion of the fee must be paid to the department upon written request of the department.

(10) The contested case provisions of the Montana Administrative Procedure Act, provided for in Title 2, chapter 4, part 6, apply to a hearing before the ~~board-department~~ BOARD under this section.

(11) A municipality may raise rates to cover costs associated with the fees prescribed in this section for a public sewer system without the hearing required in 69-7-111.

(12) (a) The application fee assessed pursuant to this section for a suction dredge, as described in 82-4-310(2), may not be more than:

(i) \$25 if it is owned and operated by a resident of this state; or

(ii) \$100 if it is owned and operated by a nonresident of this state.

(b) The annual fee assessed pursuant to this section for a suction dredge, as described in 82-4-310(2), may not be more than:

(i) \$25 if it is owned and operated by a resident of this state; or

(ii) \$100 if it is owned and operated by a nonresident of this state.

(13) A county, an incorporated city or town, or a conservation district formed pursuant to Title 76,

chapter 15, is not subject to fees for authorizations pursuant to 75-5-318 or certifications related to section 401 of the federal Clean Water Act, 33 U.S.C. 1341."

Section 74. Section 75-5-611, MCA, is amended to read:

~~"75-5-611. Violation of chapter -- administrative actions and penalties -- notice and hearing. (1)~~

~~When the department has reason to believe that a violation of this chapter, a rule adopted under this chapter, or a condition of a permit or authorization required by a rule adopted under this chapter has occurred, it may have a written notice letter served personally or by certified mail on the alleged violator or the violator's agent. The notice letter must state:~~

~~(a) the provision of statute, rule, permit, or approval alleged to be violated;~~

~~(b) the facts alleged to constitute the violation;~~

~~(c) the specific nature of corrective action that the department requires;~~

~~(d) as applicable, the amount of the administrative penalty that will be assessed by order under subsection (2) if the corrective action is not taken within the time provided under subsection (1)(e); and~~

~~(e) as applicable, the time within which the corrective action is to be taken or the administrative penalty will be assessed. For the purposes of this chapter, service by certified mail is complete on the date of receipt. Except as provided in subsection (2)(a)(ii), an administrative penalty may not be assessed until the provisions of subsection (1) have been complied with.~~

~~(2) (a) The department may issue an administrative notice and order in lieu of the notice letter provided under subsection (1) if the department's action:~~

~~(i) does not involve assessment of an administrative penalty; or~~

~~(ii) seeks an administrative penalty only for an activity that it believes and alleges has violated or is violating 75-5-605.~~

~~(b) A notice and order issued under this section must meet all of the requirements specified in subsection (1).~~

~~(3) In a notice and order given under subsection (1), the department may require the alleged violator to appear before the board for a public hearing and to answer the charges. The hearing must be held no sooner than 15 days after service of the notice and order, except that the board department may set an earlier date for~~

1 hearing if it is requested to do so by the alleged violator. The board department may set a later date for hearing
2 at the request of the alleged violator if the alleged violator shows good cause for delay.

3 (4) ~~If the department does not require an alleged violator to appear before the board for a public~~
4 ~~hearing, the alleged violator may request the board department to conduct the hearing. The request must be in~~
5 ~~writing and must be filed with the department no later than 30 days after service of a notice and order under~~
6 ~~subsection (2). If a request is filed, a hearing must be held within a reasonable time. If a hearing is not~~
7 ~~requested within 30 days after service upon the alleged violator, the opportunity for a contested case appeal to~~
8 ~~the board department under Title 2, chapter 4, part 6, is waived.~~

9 (5) ~~If a contested case hearing is held under this section, it must be public and must be held in the~~
10 ~~county in which the violation is alleged to have occurred or in Lewis and Clark County.~~

11 (6) (a) ~~After a hearing, the board department shall make findings and conclusions that explain its~~
12 ~~decision.~~

13 (b) ~~If the board department determines that a violation has occurred, it shall also issue an appropriate~~
14 ~~order for the prevention, abatement, or control of pollution, the assessment of administrative penalties, or both.~~

15 (c) ~~If the order requires abatement or control of pollution, the board department shall state the date or~~
16 ~~dates by which a violation must cease and may prescribe timetables for necessary action in preventing,~~
17 ~~abating, or controlling the pollution.~~

18 (d) ~~If the order requires payment of an administrative penalty, the board department shall explain~~
19 ~~how it determined the amount of the administrative penalty.~~

20 (e) ~~If the board department determines that a violation has not occurred, it shall declare the~~
21 ~~department's notice void.~~

22 (7) ~~The alleged violator may petition the board department for a rehearing on the basis of new~~
23 ~~evidence, which petition the board department may grant for good cause shown.~~

24 (8) ~~Instead of issuing an order, the board may direct the department to may initiate appropriate action~~
25 ~~for recovery of a penalty under 75-5-631, 75-5-632, 75-5-633, or 75-5-635.~~

26 (9) (a) ~~Except as provided in subsection (9)(d), an action initiated under this section may include an~~
27 ~~administrative penalty of not more than \$10,000 for each day of each violation; however, the maximum penalty~~
28 ~~may not exceed \$100,000 for any related series of violations.~~

1 ~~(b) Administrative penalties collected under this section must be deposited in the general fund.~~

2 ~~(c) In determining the amount of penalty to be assessed to a person, the department and board shall~~
3 ~~consider the penalty factors in 75-1-1001, rules promulgated under 75-5-201, and subsection (9)(d).~~

4 ~~(d) A person who commits a violation that adversely affects the department's administration of this~~
5 ~~chapter, a rule adopted pursuant to this chapter, or a condition of a permit or authorization issued under this~~
6 ~~chapter but does not harm or have the potential to harm human health, the environment, or the department's~~
7 ~~ability to protect human health or the environment may not be assessed a penalty of more than \$500 for each~~
8 ~~day of the violation, not to exceed \$5,000 for all days of the same violation.~~

9 ~~(e) The contested case provisions of the Montana Administrative Procedure Act, provided for in Title~~
10 ~~2, chapter 4, part 6, apply to a hearing conducted under this section."~~

11
12 **Section 75.** Section 75-5-614, MCA, is amended to read:

13 ~~"75-5-614. Injunctions authorized. (1) Except as provided in 81-9-240, the department is authorized~~
14 ~~to commence a civil action seeking appropriate relief, including a permanent or temporary injunction, for a~~
15 ~~violation that would be subject to a compliance order under 75-5-613. An action under this subsection may be~~
16 ~~commenced in the district court of the county where a violation occurs or is threatened, and the court has~~
17 ~~jurisdiction to restrain the violation and to require compliance.~~

18 ~~(2) Except as provided in 81-9-240, the department may bring an action for an injunction against the~~
19 ~~continuation of an alleged violation of the terms or conditions of a permit issued by the department or any rule~~
20 ~~or effluent standard promulgated under this chapter or against a person who fails to comply with an emergency~~
21 ~~order issued by the department under 75-5-621 or a final order of the board department. The court to which the~~
22 ~~department applies for an injunction may issue a temporary injunction if it finds that there is reasonable cause~~
23 ~~to believe that the allegations of the department are true, and it may issue a temporary restraining order~~
24 ~~pending action on the temporary injunction."~~

25
26 **Section 76.** Section 75-5-621, MCA, is amended to read:

27 ~~"75-5-621. Emergencies. (1) Notwithstanding other provisions of this chapter, if the department finds~~
28 ~~that a person is committing or is about to commit an act in violation of this chapter or an order or rule issued~~

under this chapter that, if it occurs or continues, will cause substantial pollution the harmful effects of which will not be remedied immediately after the commission or cessation of the act, the department may order the person to stop, avoid, or moderate the act so that the substantial injury will not occur. The order is effective immediately upon receipt by the person to whom it is directed, unless the department provides otherwise.

(2) Notice of the order must conform to the requirements of 75-5-611(1) so far as practicable. The notice must indicate that the order is an emergency order.

(3) Upon issuing an order, the department shall fix a place and time for a hearing before the board, not later than 5 days after issuing the order unless the person to whom the order is directed requests a later time. The department may deny a request for a later time if it finds that the person to whom the order is directed is not complying with the order. The hearing must be conducted in the manner specified in 75-5-611. As soon as practicable after the hearing, the board department shall affirm, modify, or set aside the order of the department. The order of the board must be accompanied by the information required in 75-5-611(6). An action for review of the order of the board may be initiated in the manner specified in 75-5-641. Except as provided in 81-9-240, the initiation of an action or taking of an appeal may not stay the effectiveness of the order unless the court finds that the board department did not have reasonable cause to issue an order under this section."

Section 77. Section 75-5-641, MCA, is amended to read:

"75-5-641. Appeals from board DEPARTMENT orders -- review by district court. (1) An appeal of an order of the board department must be in the district court of the county in which the alleged source of pollution is located.

(2) A person interested in the order may intervene, in the manner provided by the rules of civil procedure, if the person shows good cause. An intervenor is a party for the purposes of this chapter.

(3) The attorney general shall represent the board department if requested, or the department may appoint special counsel for the proceedings, subject to the approval of the attorney general.

(4) Except as provided in 81-9-240, the initiation of an action for review or the taking of an appeal does not stay the effectiveness of an order of the board unless the court finds that there is probable cause to believe:

(a) that refusal to grant a stay will cause serious harm to the affected party; and

(b) ~~that a violation found by the board department will not continue or, if it does continue, the harmful effects on state waters will be remedied immediately on the cessation of the violation.~~

(5) ~~If a court does not stay the effectiveness of an order of the board, it may enforce compliance with that order by issuing a temporary restraining order or an injunction at the request of the board department.~~

Section 78. Section 75-5-702, MCA, is amended to read:

~~"75-5-702. Monitoring -- water quality assessment listing -- costs payable by department -- statewide advisory group.~~ (1) ~~The department shall monitor state waters to assess the quality of those waters and to identify surface water bodies or segments of surface water bodies that are threatened or impaired. The department shall use the monitoring results to revise the list of water bodies that are identified as threatened or impaired and to establish a priority ranking for TMDL development for those waters in accordance with subsections (4) and (7).~~

(2) ~~In revising the list prepared pursuant to this section, the department shall use all currently available data, including information or data obtained from federal, state, and local agencies, private entities, or individuals with an interest in water quality protection. Except as provided in subsection (6), the department may modify the list only if there is sufficient credible data to support the modification. Prior to publishing a final list, the department shall provide public notice and allow 60 days for public comment on the draft list. The department shall make available for public review, upon request, documentation used in the determination to list or delist a particular water body, including, at a minimum, a description of the information, data, and methodology used. The department may charge a reasonable fee for the documentation, commensurate with the cost of providing the documentation to the requestor.~~

(3) ~~A person may request that the department add or remove a water body or reprioritize a water body on a draft or published list by providing the data or information necessary to support the request. The department shall review the data within 60 days from its submittal. If the department determines that there is sufficient credible data to grant the request, the department shall provide public notice of its intended action and allow 60 days for public comment prior to taking action on the request. A person aggrieved by the department's decision to grant or deny the request may appeal the department's decision to the board department.~~

(4) ~~The department shall, in consultation with local conservation districts and watershed advisory~~

1 groups pursuant to 75-5-704, review and revise the list and priority rankings of water bodies identified as
2 threatened or impaired. The department shall review and revise the list at intervals not to exceed 5 years. The
3 department shall make available for public review the data and information used in making any changes in its
4 list of threatened or impaired water bodies that is developed and maintained pursuant to this section.

5 ~~(5) By October 1, 1999, and in consultation with the statewide TMDL advisory group established~~
6 ~~pursuant to subsection (10), the department shall develop and maintain a data management system that can be~~
7 ~~used to assess the validity and reliability of the data used in the listing and priority ranking process. The~~
8 ~~department shall make available to the public, upon request, data from its data management system. The~~
9 ~~department may charge a reasonable fee for the data, commensurate with its cost of providing the data to the~~
10 ~~requestor.~~

11 ~~(6) By October 1, 1999, and in consultation with the statewide TMDL advisory group, the department~~
12 ~~shall use the data management system developed and maintained pursuant to subsection (5) to revise the list~~
13 ~~and to remove any water body that lacks sufficient credible data to support its listing. If the department removes~~
14 ~~a water body because there is a lack of sufficient credible data to support its listing, the department shall~~
15 ~~monitor and assess that water body during the next field season or as soon as possible thereafter to determine~~
16 ~~whether it is a threatened water body or an impaired water body.~~

17 ~~(7) Except as provided in subsection (9), in prioritizing water bodies for TMDL development, the~~
18 ~~department shall, in consultation with the statewide TMDL advisory group, take into consideration the following:~~

- 19 ~~(a) the beneficial uses established for a water body;~~
20 ~~(b) the extent that natural factors over which humans have no control are contributing to any~~
21 ~~impairment;~~
22 ~~(c) the impacts to human health and aquatic life;~~
23 ~~(d) the degree of public interest and support;~~
24 ~~(e) the character of the pollutant and the severity and magnitude of water quality standard~~
25 ~~noncompliance;~~
26 ~~(f) whether the water body is an important high-quality resource in an early stage of degradation;~~
27 ~~(g) the size of the water body not achieving standards;~~
28 ~~(h) immediate programmatic needs, such as waste load allocations for new permits or permit~~

1 ~~renewals and load allocations for new nonpoint sources;~~

2 ~~(i) court orders and decisions relating to water quality;~~

3 ~~(j) state policies and priorities, including the protection and restoration of native fish when appropriate;~~

4 ~~(k) the availability of technology and resources to correct the problems;~~

5 ~~(l) whether actions or voluntary programs that are likely to correct the impairment of a particular water~~
6 ~~body are currently in place; and~~

7 ~~(m) the recreational, economic, and aesthetic importance of a particular water body.~~

8 ~~(8) Except as provided in subsection (9), the department shall, in consultation with the statewide~~
9 ~~TMDL advisory group, develop a method of rating water bodies according to the criteria and considerations~~
10 ~~described in subsection (7) in order to rank the listed water bodies as high priority, moderate priority, or low~~
11 ~~priority for TMDL development. The department may not rank a water body as a high priority under this section~~
12 ~~without first validating the data necessary to support the ranking.~~

13 ~~(9) (a) When the department receives an application for a new individual permit to discharge into a~~
14 ~~surface water body or a segment of a surface water body pursuant to 75-5-401, the surface water body or~~
15 ~~segment of a surface water body has been listed pursuant to subsection (2) of this section, the discharge would~~
16 ~~contain a pollutant for which the water body or segment is threatened or impaired, and a TMDL has not been~~
17 ~~developed for that water body or segment, the department shall:~~

18 ~~(i) within 30 days of the department's receipt of the application, initiate the development of a TMDL on~~
19 ~~the water body or segment; and~~

20 ~~(ii) except as provided in subsection (9)(b), within 180 days of the department's receipt of the~~
21 ~~application, complete development of the TMDL pursuant to 75-5-703.~~

22 ~~(b) If the department is not able to complete development of the TMDL in accordance with subsection~~
23 ~~(9)(a)(ii), the department shall, within 30 days of the department's receipt of the application, specify in writing to~~
24 ~~the applicant why the department is not able to complete development of a TMDL in accordance with~~
25 ~~subsection (9)(a)(ii). The department and the applicant shall make reasonable efforts to mutually agree in~~
26 ~~writing to a timeframe in which the department shall complete development of the TMDL. If the department~~
27 ~~specifies a lack of resources as a reason why the department cannot complete development of the TMDL in~~
28 ~~accordance with subsection (9)(a)(ii), the department shall clearly explain in its written specification what~~

resources are not available, why those resources are not available, and when those resources will be available.

(c) If the department and the applicant cannot mutually agree to a timeframe in accordance with subsection (9)(b), the department shall, within 60 days of the department's receipt of the application, specify in writing to the applicant the timeframe in which the TMDL will be completed by the department and the reasons why that timeframe is appropriate. If the department specifies a lack of resources as a reason why the department's timeframe is appropriate, the department may request the applicant provide funding for the development of the TMDL in order to accelerate the completion of the TMDL.

(d) The applicant may, within 15 days of the department's written specification provided in accordance with subsection (9)(c), request in writing a hearing before the board department for the purpose of petitioning the board to reverse or modify the department's decision. The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing before the board under this subsection. If the parties to the contested case waive a formal proceeding pursuant to 2-4-603, the informal proceeding must be conducted within 30 days after the board's receipt of the written request. After the hearing and in a reasonable time, the board department shall affirm, modify, or reverse the its action of the department, and the board shall make findings and conclusions that explain its decision. Pending the board's decision, the department shall develop the TMDL in accordance with the timeframe specified in subsection (9)(a)(ii).

(e) The department may not declare an application incomplete or deficient because a TMDL has not been prepared.

(f) If on April 27, 2015, an application for a new individual permit to discharge into a surface water body or a segment of a surface water body pursuant to 75-5-401 is pending, the surface water body or segment of a surface water body has been listed pursuant to subsection (2) of this section, the discharge would contain a pollutant for which the water body or segment is threatened or impaired, and a TMDL has not been developed for the water body or segment, the department shall, except as provided in subsection (9)(g), complete a TMDL for the water body or segment within 180 days of April 27, 2015.

(g) If the department is not able to complete development of the TMDL within 180 days of April 27, 2015, pursuant to subsection (9)(f), then the timeframes established in accordance with subsections (9)(b), (9)(c), and (9)(d) apply to the application, but the timeframes are measured from April 27, 2015, not from the date the department receives an application.

1 ~~(10) (a) The department shall establish a statewide TMDL advisory group to serve in the~~
2 ~~consultation capacity set forth in 75-5-703, 75-5-704, and this section. Fourteen members, and any replacement~~
3 ~~members that may be necessary, must be appointed by the director, based upon one nomination from each of~~
4 ~~the following interests:~~

5 ~~(i) livestock-oriented agriculture;~~

6 ~~(ii) farming-oriented agriculture;~~

7 ~~(iii) conservation or environmental interests;~~

8 ~~(iv) water-based recreationists;~~

9 ~~(v) the forestry industry;~~

10 ~~(vi) municipalities;~~

11 ~~(vii) point source dischargers;~~

12 ~~(viii) mining;~~

13 ~~(ix) federal land management agencies;~~

14 ~~(x) state trust land management agencies;~~

15 ~~(xi) supervisors of soil and water conservation districts for counties east of the continental divide;~~

16 ~~(xii) supervisors of soil and water conservation districts for counties west of the continental divide;~~

17 ~~(xiii) the hydroelectric industry; and~~

18 ~~(xiv) fishing-related businesses.~~

19 ~~(b) If the director receives more than one nomination from a particular interest, the director shall notify~~
20 ~~the respective nominators and request that they agree on one nominee.~~

21 ~~(11) The department shall provide public notice of meetings of the statewide TMDL advisory group and~~
22 ~~shall solicit, document, and consider public comments provided during the deliberations of the advisory group."~~

23
24 **Section 54.** Section 75-5-802, MCA, is amended to read:

25 **"75-5-802. Permitting -- concentrated animal feeding operation.** (1) For the purpose of permitting
26 concentrated animal feeding operations, the ~~board~~department shall adopt, by reference, the federal regulations
27 and definitions contained in 40 CFR, parts 122.23 and 412.

28 (2) Subject to the provisions of subsection (3), concentrated animal feeding operations that meet the

requirements of 40 CFR, part 412, must be authorized by the department under a general permit.

(3) If, upon review of an application for a general permit authorization for a concentrated animal feeding operation production area, the department discovers site-specific information that indicates that a general permit authorization is not sufficiently protective of water quality, the department shall require an individual permit."

Section 80. Section 75-6-102, MCA, is amended to read:

"75-6-102. Definitions. As used in this part, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Board" means the board of environmental review provided for in 2-15-3502.

(2)(1) "Certified source water protection area" means an area certified by the department that identifies the surface and subsurface area surrounding a source of water for a public water supply system through which contaminants may move toward and reach the source of supply.

(3)(2) "Community water system" means a public water supply system that serves at least 15 service connections used by year-round residents or that regularly serves at least 25 year-round residents.

(4)(3) "Contamination" means impairment of the quality of state waters by sewage, industrial waste, or other waste creating a hazard to human health.

(5)(4) "Cross-connection" means a connection between a public water supply system and another water supply system, either public or private, or a wastewater or sewerline or other potential source of contamination so that a flow of water into or contamination of the public water supply system from the other source of water or contamination is possible.

(6)(5) "Department" means the department of environmental quality provided for in 2-15-3501.

(7)(6) "Drainage" means rainfall, surface, and subsoil water.

(8)(7) "Industrial waste" means any waste substance from the processes of business or industry or from the development of a natural resource, together with any sewage that may be present.

(9)(8) "Maximum contaminant level" means the maximum permissible level of a contaminant in water that is delivered to a user of a public water supply system.

(10)(9) "Other waste" means garbage, municipal refuse, decayed wood, sawdust, shavings, bark, lime,

1 sand, ashes, offal, night soil, oil, grease, tar, heat, chemicals, dead animals, sediment, wrecked or discarded
2 equipment, radioactive materials, solid waste, and all other substances that may pollute state waters.

3 ~~(11)(10)~~ "Person" means an individual, firm, partnership, company, association, corporation, city, town,
4 local government entity, federal agency, or any other governmental or private entity, whether organized for
5 profit or not.

6 ~~(12)(11)~~ (a) "Pollution" means contamination or other alteration of the physical, chemical, or biological
7 properties of state waters that exceeds that which is permitted by Montana water quality standards, including
8 but not limited to standards relating to change in temperature, taste, color, turbidity, or odor or the discharge or
9 introduction of a liquid, gaseous, solid, radioactive, or other substance into state water that will or is likely to
10 create a nuisance or render the waters harmful, detrimental, or injurious to public health, recreation, safety, or
11 welfare, to livestock, or to wild animals, birds, fish, or other wildlife.

12 ~~(b)~~ A discharge that is authorized under the pollution discharge permit rules of the board ~~department~~ is
13 not pollution under this chapter.

14 ~~(13)(12)~~ "Public sewage system" means a system of collection, transportation, treatment, or disposal of
15 sewage that serves 15 or more families or 25 or more persons daily for any 60 or more days in a calendar year.

16 ~~(14)(13)~~ "Public water supply system" means a system for the provision of water for human
17 consumption from a community well, water hauler for cisterns, water bottling plant, water dispenser, or other
18 water supply that has at least 15 service connections or that regularly serves at least 25 persons daily for any
19 60 or more days in a calendar year.

20 ~~(15)(14)~~ "Reclaimed wastewater" means wastewater that is treated by a public sewage system for
21 reuse for private, public, or commercial purposes.

22 ~~(16)(15)~~ "Safe Drinking Water Act" means 42 U.S.C. 300f and regulations set forth in 40 CFR, parts
23 141 and 142.

24 ~~(17)(16)~~ "Sewage" means water-carried waste products from residences, public buildings, institutions,
25 or other buildings, including discharge from human beings, together with ground water infiltration and surface
26 water present.

27 ~~(18)(17)~~ "Source water protection program" means a program administered by the department to
28 certify source water protection delineation and assessment reports and source water protection plans and to

1 ~~review source water protection ordinances.~~

2 ~~(19)(18) "State waters" means a body of water, irrigation system, or drainage system, either surface or~~
3 ~~underground.~~

4 ~~(20)(19) "Transient noncommunity water system" means a public water supply system that is not a~~
5 ~~community water system and that does not regularly serve at least 25 of the same persons for at least 6~~
6 ~~months a year."~~

7

8 **Section 55.** Section 75-6-104, MCA, is amended to read:

9 **"75-6-104. Duties of department.** (1) The department has general supervision over all state waters
10 that are directly or indirectly being used by a person for a public water supply system, for domestic purposes, or
11 as a source of ice.

12 (2) The department shall, subject to the provisions of 75-6-116 and as provided in 75-6-131, adopt
13 rules and standards concerning:

14 (a) maximum contaminant levels for waters that are or will be used for a public water supply system;

15 (b) fees, as described in 75-6-108, for services rendered by the department;

16 (c) monitoring, recordkeeping, and reporting by persons who own or operate public water supply
17 systems;

18 (d) requiring public notice to all users of a public water supply system when a person has been
19 granted a variance or exemption or is in violation of this part or a rule or order issued pursuant to this part;

20 (e) the siting, construction, operation, and modification of a public water supply system or public
21 sewage system, including requirements to remedy:

22 (i) defects in the design, operation, or maintenance of a public water supply system or public sewage
23 system in order to prevent or correct introduction of contamination into water used for a public water supply
24 system, for domestic purposes, or as a source of ice;

25 (ii) fecal contamination in water used by a public water supply system; or

26 (iii) failure or malfunction of the sources, treatment, storage, or distribution portion of a public water
27 supply system in order to prevent or correct introduction of contamination into water used for a public water
28 supply system, for domestic purposes, or as a source of ice;

1 (f) the review of the technical, managerial, and financial capacity of a proposed public water supply
2 system or public sewage system, as necessary to ensure the capability of the system to meet the requirements
3 of this part;

4 (g) the collection and analysis of samples of water used for drinking or domestic purposes;

5 (h) the issuance of variances and exemptions as authorized by the federal Safe Drinking Water Act
6 and this part;

7 (i) administrative enforcement procedures and administrative penalties authorized under this part;

8 (j) standards and requirements for the review and approval of programs that may be voluntarily
9 submitted by suppliers of public water supply systems to prevent water supply contamination from a cross-
10 connection, including provisions to exempt cross-connections from the standards and requirements if all
11 connected systems are department-approved public water supply systems;

12 (k) (i) allowable uses of reclaimed wastewater and classification of those uses;

13 (ii) treatment, monitoring, recordkeeping, and reporting standards and requirements tailored to each
14 classification that must be met by the public sewage system to protect the uses of the reclaimed wastewater
15 and any receiving water;

16 (iii) prohibition of reclaimed wastewater uses that are not allowable under subsection (2)(k)(i) or for
17 which the reclaimed wastewater has not been treated in compliance with rules adopted under subsection
18 (2)(k)(ii); and

19 (iv) a requirement that an applicant who proposes to use reclaimed wastewater pursuant to this
20 subsection (2)(k) has obtained any necessary authorizations required under Title 85 from the department of
21 natural resources and conservation; and

22 (l) any other requirement necessary for the protection of public health as described in this part.

23 (3) Department rules must provide for the following:

24 (a) except as provided in 75-6-131, a water supply or water distribution facility reviewed and approved
25 by the department is not subject to changes in department design and construction criteria for a period of 36
26 months after written approval of the facility is issued by the department;

27 (b) except for facilities subject to permit requirements under Title 75, chapter 5, part 4, and except as
28 provided under rules adopted pursuant to 75-6-131, a system of water supply, drainage, wastewater, or sewage

reviewed and approved under this section is not subject to changes in department design or construction criteria for a period of 36 months after written approval is issued by the department;

(c) plans and specifications for a portion of a facility or system subject to a 36-month limit on criteria changes pursuant to subsections (3)(a) and (3)(b) but not constructed within the 36-month timeframe must be resubmitted for department review and approval before construction of that portion of the facility;

(d) the provisions of this subsection (3) may not limit an applicant's ability to alter a proposed project that is otherwise in conformance with applicable laws, rules, standards, and criteria.

(4) The department OR THE BOARD may issue orders necessary to fully implement the provisions of this part.

(5) The department shall:

(1)(a) upon its own initiative or complaint to the department, to the mayor or health officer of a municipality, or to the managing board or officer of a public institution, make an investigation of alleged pollution of a water supply system and, if required, prohibit the continuance of the pollution by ordering removal of the cause of pollution;

(2)(b) have waters examined to determine their quality and the possibility that they may endanger public health;

(3)(c) consult and advise authorities of cities and towns and persons having or about to construct systems for water supply, drainage, wastewater, and sewage as to the most appropriate source of water supply and the best method of ensuring its quality;

(4)(d) advise persons as to the best method of treating and disposing of their drainage, sewage, or wastewater with reference to the existing and future needs of other persons and to prevent pollution;

(5)(e) consult with persons engaged in or intending to engage in manufacturing or other business whose drainage or sewage may tend to pollute waters as to the best method of preventing pollution;

(6)(f) collect fees, as described in 75-6-108, for services and deposit the fees collected in the public drinking water special revenue fund established in 75-6-115;

(7)(g) establish and maintain experiment stations and conduct experiments to study the best methods of treating water, drainage, wastewater, and sewage to prevent pollution, including investigation of methods used in other states;

(8)(h) enter on premises at reasonable times to determine sources of pollution or danger to water supply systems and whether rules and standards of the ~~board~~ department are being obeyed;

(9)(i) enforce and administer the provisions of this part;

(10)(j) establish a plan for the provision of safe drinking water under emergency circumstances;

(11)(k) maintain an inventory of public water supply systems and establish a program for conducting sanitary surveys; and

(12)(l) enter into agreements with local boards of health whenever appropriate for the performance of surveys and inspections under the provisions of this part."

Section 56. Section 75-6-105, MCA, is amended to read:

"75-6-105. Records required for wells drilled to supply water to public. Every person drilling a water well to furnish water for public consumption shall keep a complete record of the depth, thickness, and character of different strata and other information prescribed by the ~~board~~ department. Data ~~shall~~ must be furnished to the department on forms prescribed by it. These data are available to the public at all reasonable times."

Section 57. Section 75-6-106, MCA, is amended to read:

"75-6-106. Laboratory license required. A laboratory analysis of water taken from a public water supply system or any report of an analysis required by this part or a rule adopted under this part may not be accepted by the department ~~or board~~ unless the analysis or report is made by the department of public health and human services' laboratory or by a laboratory licensed by the department of public health and human services for water analysis purposes."

Section 58. Section 75-6-107, MCA, is amended to read:

"75-6-107. Variances and exemptions. (1) Except as provided in subsection (3), the department may grant a variance or exemption from the requirements of this part or the rules adopted under this part pursuant to the terms and conditions of the variance and exemption rules adopted by the ~~board~~ department.

(2) Except as provided in subsection (3), a variance or exemption granted pursuant to this section

1 must be accompanied by a compliance plan specifying a time schedule for compliance.

2 (3) The department may grant for a period of up to 5 years a variance or exemption for a public water
3 system to use bottled water to achieve compliance with a maximum contaminant level for nitrate. The variance
4 or exemption must include the requirement that the owner of the public water system warn the public that the
5 tap water is not potable and could pose a health risk if consumed by:

6 (a) posting signs at locations required by the variance or exemption for the period granted by the
7 variance or exemption; and

8 (b) delivering annual notices as required by the variance or exemption to users of the public water
9 system.

10 (4) A person aggrieved by a decision of the department to grant, deny, revoke, or modify a variance
11 or exemption may appeal the department's decision to the ~~board-department~~ BOARD as provided in the Montana
12 Administrative Procedure Act."

13
14 **Section 59.** Section 75-6-108, MCA, is amended to read:

15 **"75-6-108. ~~Board-Department~~ to prescribe fees -- opportunity for appeal.** (1) The ~~board~~
16 ~~department~~ shall by rule prescribe fees to be assessed annually by the department on owners of public water
17 supply systems to recover department costs in providing services under this part. The annual fee for a public
18 water supply system is no more than \$2.25 for each service connection to the public water supply system for
19 the biennium beginning July 1, 1991, and ending June 30, 1993, and thereafter is no more than \$2 for each
20 service connection to the public water supply system, although the minimum fee for any system is \$100, except
21 that the fee for a transient noncommunity water system is \$50.

22 (2) Public water supply systems in a municipality may raise the rates to recover costs associated with
23 the fees prescribed in this section without the public hearing required in 69-7-111.

24 (3) The ~~board-department~~ shall by rule prescribe fees to be assessed by the department on persons
25 who submit plans and specifications for construction, alteration, or extension of a public water supply system or
26 public sewage system. The fees must be commensurate with the cost to the department of reviewing the plans
27 and specifications.

28 (4) Fees collected pursuant to this section must be deposited in the public drinking water special

1 revenue fund established in 75-6-115.

2 (5) (a) The department shall notify the owner of a public water supply system in writing of the amount
3 of the fee to be assessed and the basis for the assessment. The owner may appeal the fee assessment in
4 writing ~~to the board~~ TO THE BOARD within 20 days after receipt of the written notice.

5 (b) An appeal must be based on the allegation that the fee is erroneous or excessive. An appeal may
6 not be based only on the fee schedule adopted by the ~~board~~ department.

7 (c) If any part of the fee assessment is not appealed, it must be paid to the department upon receipt
8 of the notice provided for in subsection (5)(a)."

9

10 **Section 86.** Section 75-6-109, MCA, is amended to read:

11 ~~"75-6-109. Administrative enforcement. (1) If the department believes that a violation of this part, a~~
12 ~~rule adopted under this part, or a condition of approval issued under this part has occurred, it may serve written~~
13 ~~notice of the violation, by certified mail, on the alleged violator or the violator's agent. The notice must specify~~
14 ~~the provision of this part, the rule, or the condition of approval alleged to have been violated and the facts~~
15 ~~alleged to constitute a violation. The notice must include an order to take necessary corrective action within a~~
16 ~~reasonable period of time. The time period must be stated in the order. Service by mail is complete on the date~~
17 ~~of filing.~~

18 ~~(2) If the alleged violator does not request a hearing before the board within 30 days of the date of~~
19 ~~service, the order becomes final. Failure to comply with a final order may subject the violator to an action~~
20 ~~commenced pursuant to 75-6-104, 75-6-113, or 75-6-114.~~

21 ~~(3) If the alleged violator requests a hearing before the board within 30 days of the date of service,~~
22 ~~the board department shall schedule a hearing. After the hearing is held, the board department may:~~

23 ~~(a) affirm or modify the department's order issued under subsection (1) if the board department finds~~
24 ~~that a violation has occurred; or~~

25 ~~(b) rescind the department's order if the board department finds that a violation has not occurred.~~

26 ~~(4) An order issued by the department or the board may set a date by which the violation must cease~~
27 ~~and set a time limit for action to correct a violation.~~

28 ~~(5) As an alternative to issuing an order pursuant to subsection (1), the department may:~~

~~(a) require the alleged violator to appear before the board for a hearing, at a time and place specified in the notice, to answer the charges complained of; or~~

~~(b) initiate an action under 75-6-111(2), 75-6-113, or 75-6-114.~~

~~(6) (a) An action initiated under this part may include an administrative penalty not to exceed:~~

~~(i) \$1,000 for each day of a violation pertaining to a public water system, other than a water hauler or a water bottling plant, that serves a population of more than 10,000; and~~

~~(ii) \$500 for each day of violation for other violations.~~

~~(b) Administrative penalties collected under this section must be deposited in the state general fund.~~

~~(7) In determining the amount of penalty to be assessed to a person, the department or the board, as appropriate, shall consider the penalty factors in 75-1-1001 and the rules promulgated under 75-6-103(2)(i). 75-6-104(2)(i).~~

~~(8) The contested case provisions of the Montana Administrative Procedure Act, provided for in Title 2, chapter 4, part 6, apply to a hearing under 75-6-108 or this section."~~

Section 60. Section 75-6-112, MCA, is amended to read:

"75-6-112. Prohibited acts. A person may not:

(1) commence or continue construction, alteration, extension, or operation of a system of water supply or water distribution that is intended to be used as a public water supply system or a system that is intended to be used as a public sewage system before the person submits to the department necessary maps, plans, and specifications for its review and the department approves those maps, plans, and specifications;

(2) operate or maintain a public water supply system that exceeds a maximum contaminant level established by the ~~board~~ department unless the person has been granted or has an application pending for a variance or exemption pursuant to this part;

(3) violate any provision of this part or a rule adopted under this part; or

(4) violate any condition or requirement of an approval issued pursuant to this part."

Section 88. Section ~~75-6-113~~, MCA, is amended to read:

~~"75-6-113. Penalty.~~ Any person violating this part or any rule or order of the board or department

1 issued under the provisions of this part shall be guilty of a misdemeanor and upon conviction shall be fined not
2 less than \$50 or more than \$500. Each day upon which a violation of this part occurs shall be considered a
3 separate offense."

4
5 **Section 61.** Section 75-6-116, MCA, is amended to read:

6 **"75-6-116. State regulations no more stringent than federal regulations or guidelines.** (1) After
7 April 14, 1995, except as provided in subsections (2) through (5) or unless required by state law, the ~~board~~
8 department may not adopt a rule to implement this chapter that is more stringent than the comparable federal
9 regulations or guidelines that address the same circumstances. The ~~board~~ department may incorporate by
10 reference comparable federal regulations or guidelines.

11 (2) The ~~board~~ department may adopt a rule to implement this chapter that is more stringent than
12 comparable federal regulations or guidelines only if the ~~board~~ department makes a written finding after a public
13 hearing and public comment and based on evidence in the record that:

14 (a) the proposed state standard or requirement protects public health or the environment of the state;
15 and

16 (b) the state standard or requirement to be imposed can mitigate harm to the public health or
17 environment and is achievable under current technology.

18 (3) The written finding must reference information and peer-reviewed scientific studies contained in
19 the record that forms the basis for the ~~board's~~ department's conclusion. The written finding must also include
20 information from the hearing record regarding the costs to the regulated community that are directly attributable
21 to the proposed state standard or requirement.

22 (4) (a) A person affected by a rule of the board of environmental review adopted after January 1,
23 1990, and before April 14, 1995, that that person believes to be more stringent than comparable federal
24 regulations or guidelines may petition the ~~board~~ department to review the rule. If the ~~board~~ department
25 determines that the rule is more stringent than comparable federal regulations or guidelines, the ~~board~~
26 department shall comply with this section by either revising the rule to conform to the federal regulations or
27 guidelines or by making the written finding, as provided under subsection (2), within a reasonable period of
28 time, not to exceed 12 months after receiving the petition. A petition under this section does not relieve the

petitioner of the duty to comply with the challenged rule. The ~~board-department~~ may charge a petition filing fee in an amount not to exceed \$250.

(b) A person may also petition the ~~board-department~~ for a rule review under subsection (4)(a) if the ~~board~~ board of environmental review or the department adopts a rule after January 1, 1990, in an area in which no federal regulations or guidelines existed and the federal government subsequently establishes comparable regulations or guidelines that are less stringent than the previously adopted ~~board~~-rule.

(5) This section does not apply to a rule adopted under the emergency rulemaking provisions of 2-4-303(1)."

Section 62. Section 75-6-121, MCA, is amended to read:

"75-6-121. Delegation of review of small public water and sewer construction. (1) If a local government requests a delegation and the appropriate division of the local government has established satisfactory review programs, the department may delegate to the division of local government review of:

(a) small public water and sewer systems; and

(b) extensions or alterations of existing public water and sewer systems that involve 50 or fewer connections.

(2) The ~~board-department~~ may adopt rules regarding the delegation of review authority to divisions of local government."

Section 63. Section 75-6-131, MCA, is amended to read:

"75-6-131. Rules for regional public water supply systems. The ~~board-department~~ shall adopt rules for approval of regional public water supply systems established by a regional water authority pursuant to Title 75, chapter 6, part 3. The rules must:

(1) include procedures for the construction of regional public water supply systems, including regulatory provisions for a series of project segments over the construction period of the project as contained in the final engineering report, as may be amended and approved by the United States bureau of reclamation, that addresses the:

(a) approval of design and construction standards that may not be subject to change for 72 months;

- (b) issuance of deviations from design and construction standards to remain in effect for 72 months;
- and
- (c) approval of an individual regional water supply system's standard construction contract documents and provisions for amendments to those documents to remain in effect for the construction period of the project;
- (2) implement plan and specification review periods or deviation request approval periods for storage, pumping, and distribution portions of a regional public water supply system of not more than 40 calendar days for the initial review by the department and not more than 20 working days for any subsequent reviews;
- (3) avoid duplicate processes and regulations by coordinating and incorporating the review and approval process applicable to a regional public water supply system by the United States bureau of reclamation."

Section 92. ~~Section 75-10-103, MCA, is amended to read:~~

~~"75-10-103. Definitions. Unless the context clearly requires otherwise, in this part, the following definitions apply:~~

~~(1) "Board" means the board of environmental review provided for in 2-15-3502.~~

~~(2)(1) "Container site" means a solid waste management facility that:~~

~~(a) is generally open to the public for the collection of solid waste that is generated by more than one household or firm and that is collected in a refuse container with a total capacity of not more than 50 cubic yards; or~~

~~(b) receives waste from waste collection vehicles and:~~

~~(i) receives no more than 3,000 tons of waste each year;~~

~~(ii) has control measures in place, including onsite staffing, to adequately contain solid wastes and blowing litter on the site and to minimize spills and leakage of liquid wastes; and~~

~~(iii) is a site at which a local government unit requires commercial waste haulers to deposit wastes at the site only during hours that the site is staffed.~~

~~(3)(2) "Department" means the department of environmental quality provided for in 2-15-3501.~~

~~(4)(3) "Local government" means a county, incorporated city or town, or solid waste management district organized under the laws of this state.~~

~~(5)(4) "Person" means any individual, firm, partnership, company, association, corporation, city, town, or local governmental entity or any other state, federal, or private entity, whether organized for profit or not.~~

~~(6)(5) "Resource recovery facility" means any facility at which solid waste is processed for the purpose of extracting, converting to energy, or otherwise separating and preparing solid waste for reuse.~~

~~(7)(6) (a) "Solid waste" means all putrescible and nonputrescible wastes, including but not limited to garbage, rubbish, refuse, ashes, sludge from sewage treatment plants, water supply treatment plants, or air pollution control facilities; construction and demolition wastes; dead animals, including offal; discarded home and industrial appliances; and wood products or wood byproducts and inert materials.~~

~~(b) Solid waste does not mean municipal sewage, industrial wastewater effluents, mining wastes regulated under the mining and reclamation laws administered by the department, slash and forest debris regulated under laws administered by the department of natural resources and conservation, or marketable byproducts.~~

~~(8)(7) "Solid waste management system" means any system that controls the storage, treatment, recycling, recovery, or disposal of solid waste. For the purposes of this definition, a container site is not a component of a solid waste management system.~~

~~(9)(8) "State solid waste management and resource recovery plan" means the statewide plan formulated by the department as authorized by this part."~~

Section 64. Section 75-10-104, MCA, is amended to read:

"75-10-104. Duties of department. The department shall:

(1) prepare, adopt, and implement a state solid waste management and resource recovery plan as required by 75-10-111 and 75-10-807;

(2) ~~prepare~~ adopt rules necessary for the implementation of this part ~~for submission to the board,~~ including but not limited to rules:

(a) governing the submission of plans for a solid waste management system;

(b) (i) establishing, for the purpose of determining the tonnage or volume-based solid waste management fee that a facility is subject to under 75-10-115(1)(c), methods for determining or estimating the amount of solid waste incinerated or disposed of at a facility; and

- 1 (ii) governing the application fee, flat annual license renewal fee, and tonnage or volume-based
2 renewal fee for solid waste management systems;
- 3 (c) establishing the license application fee that a facility is subject to under 75-10-115(1)(a);
4 (d) establishing the flat annual license renewal fee that a facility is subject to under 75-10-115(1)(b);
5 (e) establishing the tonnage or volume-based annual renewal fee that a facility is subject to under 75-
6 10-115(1)(c); and
7 (f) providing procedures for the quarterly collection of the solid waste management fee provided for in
8 75-10-204(6);
- 9 (3) provide technical assistance to persons within the state for planning, designing, constructing,
10 financing, and operating:
- 11 (a) a solid waste management system in order to ensure that the system conforms to the state plan;
12 (b) integrated waste management programs; and
13 (c) collection, disposal, reduction, and educational programs for household hazardous waste and
14 small quantities of hazardous waste that are exempt from regulation under Title 75, chapter 10, part 4;
15 (4) enforce and administer the provisions of this part;
16 (5) approve plans for a proposed solid waste management system submitted by a local government;
17 and
18 (6) serve as a clearinghouse for information on waste reduction and reuse, recycling technology and
19 markets, composting, and household hazardous waste disposal, including chemical compatibility."
20

21 **Section 65.** Section 75-10-112, MCA, is amended to read:

22 **"75-10-112. Powers and duties of local government.** A local government may:

- 23 (1) plan, develop, and implement a solid waste management system consistent with the state's solid
24 waste management and resource recovery plan and propose modifications to the state's solid waste
25 management and resource recovery plan;
26 (2) upon adoption of the state plan ~~by the board~~, pass an ordinance or resolution to exempt the local
27 jurisdiction from complying with the state plan and subsequent rules implementing the state plan. The
28 ordinance or resolution must include a means to provide solid waste disposal to the citizens of the jurisdiction

as required in part 2 of this chapter.

(3) employ appropriate personnel to carry out the provisions of this part;

(4) purchase, rent, or execute leasing agreements for equipment and material necessary for the implementation of a solid waste management system;

(5) cooperate with and enter into agreements with any persons in order to implement an effective solid waste management system;

(6) receive gifts, grants, or donations or acquire by gift, deed, or purchase land necessary for the implementation of any provision of this part;

(7) enforce the rules of the department or a local board of health pertaining to solid waste management through the appropriate county attorney;

(8) apply for and utilize state, federal, or other available money for developing or operating a solid waste management system;

(9) borrow from any lending agency funds available for assistance in planning a solid waste management system;

(10) finance a solid waste management system by:

(a) subject to 15-10-420, fixing the assessment of a tax as authorized by state law; and

(b) as provided in 7-13-4108, fixing and collecting by ordinance or resolution the rates, rentals, and charges for a solid waste management system on system customers;

(11) sell on an installment sales contract or lease to a person all or a portion of a solid waste management system that the local government plans, designs, or constructs for the consideration and upon the terms established by the local governments and consistent with the loan requirements set forth in this part and rules adopted to implement this part;

(12) procure insurance against any loss in connection with property, assets, or activities;

(13) mortgage or otherwise encumber all or a portion of a solid waste management system when the local government finds that the action is necessary to implement the purposes of this part, as long as the action is consistent with the loan requirements set forth in this part and rules adopted to implement this part;

(14) hold or dispose of real property and, subject to agreements with lessors and lessees, develop or alter the property by making improvements or betterments for the purpose of enhancing the value and

1 usefulness of the property;

2 (15) finance, design, construct, own, and operate a solid waste management system or contract for
3 any or all of the powers authorized under this part;

4 (16) control the disposition of solid waste generated within the jurisdiction of the local government,
5 except that, in the absence of an imminent threat to public health, safety, or the environment, a local
6 government may not adopt a flow control or similar ordinance to require use of a specific transfer station or
7 landfill for disposal of solid waste;

8 (17) enter into long-term contracts with local governments and private entities for:

9 (a) financing, designing, constructing, and operating a solid waste management system;

10 (b) marketing all raw or processed material recovered from solid waste;

11 (c) marketing energy products or byproducts resulting from processing or utilization of solid waste;

12 (18) finance an areawide solid waste management system through the use of any of the sources of
13 revenue available to the implementation entity for public works projects, by the use of revenue bonds issued by
14 the city or county, or by fees levied by a solid waste management district, whichever is appropriate;

15 (19) enter into interlocal agreements in order to achieve and implement the powers enumerated in this
16 part;

17 (20) regulate the siting and operation of container sites."
18

19 **Section 66.** Section 75-10-115, MCA, is amended to read:

20 **"75-10-115. Solid waste management fee.** (1) The department may ~~prepare~~ adopt rules for adoption
21 ~~by the board~~, pursuant to 75-10-104 and ~~75-10-106~~, that set fees for the management and regulation of solid
22 waste at facilities subject to regulation pursuant to part 2 of this chapter. Upon adoption ~~by the board~~, the
23 department may collect the fees. These fees may include:

24 (a) a license application fee that reflects the cost of reviewing a new solid waste management system
25 or a substantial change to an existing facility from the time an application is made until the license is issued or
26 denied;

27 (b) a flat annual license renewal fee that reflects a minimal base fee related to the fixed costs of an
28 annual inspection and license renewal. The initial annual fee year for a new facility commences on the date that

the facility initially receives waste. The fee must be based upon the categorization of solid waste management systems into separate classes identified by the following criteria:

- (i) the quantity of solid waste received by the solid waste management system;
- (ii) the nature of the solid waste received; and
- (iii) the nature of the waste management occurring within the solid waste management system.
- (c) a tonnage or volume-based fee on solid waste disposal.

(2) All fees collected must be deposited in the solid waste management account provided for in 75-10-117."

Section 96. Section 75-10-203, MCA, is amended to read:

~~"75-10-203. Definitions. Unless the context requires otherwise, in this part, the following definitions apply:~~

~~(1) "Board" means the board of environmental review provided for in 2-15-3502.~~

~~(2)(1) "Department" means the department of environmental quality provided for in 2-15-3501.~~

~~(3)(2) "Dispose" or "disposal" means the discharge, injection, deposit, dumping, spilling, leaking, or placing of any solid waste into or onto the land so that the solid waste or any constituent of it may enter the environment or be emitted into the air or discharged into any waters, including ground water.~~

~~(4)(3) "Household hazardous waste" means products commonly used in the home that due to corrosivity, ignitability, reactivity, toxicity, or other chemical or physical properties are dangerous to human health or the environment. Household hazardous waste includes but is not limited to cleaning, home maintenance, automobile, personal care, and yard maintenance products.~~

~~(5)(4) "Household waste" means any solid waste derived from households, including single and multiple residences, hotels, and motels, crew quarters, and campgrounds and other public recreation and public land management facilities.~~

~~(6)(5) (a) "Municipal solid waste landfill" means any publicly or privately owned landfill or landfill unit that receives household waste or other types of waste, including commercial waste, nonhazardous sludge, and industrial solid waste.~~

~~(b) The term does not include land application units, surface impoundments, injection wells, or waste~~

1 piles.

2 ~~(7)(6)~~ "Person" means an individual, firm, partnership, company, association, corporation, city, town,
3 local governmental entity, or any other governmental or private entity, whether organized for profit or not.

4 ~~(8)(7)~~ "Resource recovery" means the recovery of material or energy from solid waste.

5 ~~(9)(8)~~ "Resource recovery facility" means a facility at which solid waste is processed for the purpose
6 of extracting, converting to energy, or otherwise separating and preparing solid waste for reuse.

7 ~~(10)(9)~~ "Resource recovery system" means a solid waste management system that provides for the
8 collection, separation, recycling, or recovery of solid wastes, including disposal of nonrecoverable waste
9 residues.

10 ~~(11)(10)~~ (a) "Solid waste" means all putrescible and nonputrescible wastes, including but not limited to
11 garbage; rubbish; refuse; ashes; sludge from sewage treatment plants, water supply treatment plants, or air
12 pollution control facilities; construction and demolition wastes; dead animals, including offal; discarded home
13 and industrial appliances; and wood products or wood byproducts and inert materials.

14 ~~(b)~~ Solid waste does not mean municipal sewage, industrial wastewater effluents, mining wastes
15 regulated under the mining and reclamation laws administered by the department of environmental quality,
16 slash and forest debris regulated under laws administered by the department of natural resources and
17 conservation, or marketable byproducts.

18 ~~(12)(11)~~ "Solid waste management system" means a system that controls the storage, treatment,
19 recycling, recovery, or disposal of solid waste. For the purposes of this definition, a container site, as defined
20 in 75-10-103, is not a component of a solid waste management system.

21 ~~(13)(12)~~ "Storage" means the actual or intended containment of wastes, either on a temporary basis or
22 for a period of years.

23 ~~(14)(13)~~ "Transport" means the movement of wastes from the point of generation to any intermediate
24 points and finally to the point of ultimate storage or disposal.

25 ~~(15)(14)~~ "Treatment" means a method, technique, or process, including neutralization, designed to
26 change the physical, chemical, or biological character or composition of any solid waste so as to neutralize the
27 waste or so as to render it safer for transport, amenable for recovery, amenable for storage, or reduced in
28 volume.

1 ~~(16)(15) "Waste tire" means a tire that is no longer suitable for its original intended purpose because of~~
2 ~~wear, damage, or defect."~~

3
4 **Section 97.** Section 75-10-206, MCA, is amended to read:

5 ~~"75-10-206. Variance. (1) A person may apply to the board department for a variance from rules~~
6 ~~adopted by the department pursuant to 75-10-204, except for rules adopted pursuant to 75-10-204(6). The~~
7 ~~board department may grant a variance if it finds that:~~

8 ~~(a) failure to comply with the rules does not result in a danger to public health or safety; or~~
9 ~~(b) compliance with the rules from which a variance is sought would produce hardship without~~
10 ~~producing benefits to the health and safety of the public that outweigh the hardship.~~

11 ~~(2) A variance may not be granted pursuant to this section except after a hearing pursuant to the~~
12 ~~Montana Administrative Procedure Act and consideration by the board department of the relative interests of~~
13 ~~the applicant and owners of the property likely to be affected by the waste disposal system under consideration.~~

14 ~~(3) This section may not be construed as relieving the board department from the obligation to~~
15 ~~comply with the Resource Conservation and Recovery Act of 1976, as amended, or as allowing the board~~
16 ~~department to grant a variance less restrictive than that act."~~

17
18 **Section 67.** Section 75-10-221, MCA, is amended to read:

19 **"75-10-221. License required -- application.** (1) Except as provided in 75-10-214, a person may not
20 dispose of solid waste or operate a solid waste management system without a license from the department.

21 (2) The department shall provide application forms for a license as provided in this part.

22 (3) The application must contain the name and business address of the applicant, the location of the
23 proposed solid waste management system, a plan of operation and maintenance, and other information that the
24 department may by rule require.

25 (4) The license provided for in this section is for a period not to exceed 12 months unless renewed by
26 the department.

27 (5) The department may require submission of a new application if the department determines that
28 the plan of operation, the management of the solid waste system, or the geological or ground water conditions

1 have changed since the license was initially approved.

2 (6) In preparing rules ~~for board adoption~~ that establish fees for licenses and the review of applications
3 pursuant to 75-10-104(2), the department shall consider the tonnage or volume of waste to be managed and
4 the size of the proposed solid waste management system. The fees adopted ~~by the board~~ must encourage
5 reduction in the tonnage or volume of waste to be managed and cover the costs to the department of initially
6 reviewing and annually licensing the solid waste management system."

7
8 **Section 99.** Section 75-10-223, MCA, is amended to read:

9 ~~"75-10-223. Refusal by local health officer -- appeal to board~~ DEPARTMENT. (1) The local health
10 officer may refuse to validate a license issued under this part only upon a finding that the requirements of this
11 part and the rules implementing this part cannot be satisfied. If the local health officer refuses to validate the
12 license, the local health officer shall notify the applicant, the department, and any other interested person in
13 writing.

14 (2) ~~The applicant or any person aggrieved by the decision of the local health officer not to validate a~~
15 ~~license may appeal the decision to the board~~ department ~~within 30 days after receiving written notice of the~~
16 ~~local health officer's decision.~~

17 (3) ~~The hearing before the board must be held pursuant to the contested case provisions of the~~
18 ~~Montana Administrative Procedure Act."~~

19
20 **Section 100.** Section 75-10-224, MCA, is amended to read:

21 ~~"75-10-224. Revocation or denial of license by department.~~ The department may deny or revoke
22 a license to operate a solid waste management system after giving the applicant and the local health officer
23 written notice and an opportunity for a hearing ~~before the board~~ department. ~~The decision to deny or revoke a~~
24 ~~license may be made only after a finding that a solid waste management system cannot be operated or is not~~
25 ~~being operated in compliance with this part or a rule or order issued pursuant to this part. The hearing held~~
26 ~~before the board on a denial or revocation shall~~ must ~~be held pursuant to the provisions of the Montana~~
27 ~~Administrative Procedure Act."~~

Section 101. Section 75-10-227, MCA, is amended to read:

~~"75-10-227. Administrative enforcement. (1) When the department believes that a violation of part 1 or this part, a violation of a rule adopted under part 1 or this part, a violation of an order issued under this part, or a violation of a permit provision has occurred, it may serve written notice of the violation on the alleged violator or the violator's agent. The notice must specify the provision of law, rule, or permit alleged to be violated and the facts alleged to constitute a violation and may include an order to take necessary corrective action within a reasonable period of time stated in the order, an order assessing an administrative penalty pursuant to 75-10-228, or both. The order becomes final unless, within 30 days after the notice is served, the person named requests in writing a hearing before the board department. On receipt of the request, the board department shall schedule a hearing. Service by mail is complete on the date of mailing.~~

~~(2) If, after a hearing held under subsection (1), the board department finds that a violation has occurred, it shall either affirm or modify the department's order. An order issued by the department or by the board may prescribe the date by which the violation must cease and may prescribe time limits for particular action. If, after a hearing, the board department finds that a violation has not occurred, it shall rescind the department's order.~~

~~(3) Instead of issuing an order pursuant to subsection (1), the department may either:~~

~~(a) require the alleged violator to appear before the board department for a hearing at a time and place specified in the notice and answer the charges; or~~

~~(b) initiate action under part 1 or this part.~~

~~(4) This section does not prevent the board or department from making efforts to obtain voluntary compliance through warning, conference, or any other appropriate means.~~

~~(5) The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing held under this section."~~

Section 102. Section 75-10-403, MCA, is amended to read:

~~"75-10-403. Definitions. Unless the context requires otherwise, in this part, the following definitions apply:~~

~~(1) "Board" means the board of environmental review provided for in 2-15-3502.~~

~~(2)(1)~~ "Department" means the department of environmental quality provided for in 2-15-3501.

~~(3)(2)~~ "Dispose" or "disposal" means the discharge, injection, deposit, dumping, spilling, leaking, or placing of any hazardous waste into or onto the land or water so that the hazardous waste or any constituent of the hazardous waste may enter the environment or be emitted into the air or discharged into any waters, including ground water.

~~(4)(3)~~ "Environmental protection law" means a law contained in or an administrative rule adopted pursuant to Title 75, chapter 2, 5, 10, or 11.

~~(5)(4)~~ "Facility" or "hazardous waste management facility" means all contiguous land and structures, other appurtenances, and improvements on the land used for treating, storing, or disposing of hazardous waste. A facility may consist of several treatment, storage, or disposal operational units.

~~(6)(5)~~ "Generation" means the act or process of producing waste material.

~~(7)(6)~~ "Generator" means any person, by site, whose act or process produces hazardous waste or whose act first causes a hazardous waste to become subject to regulation under this part.

~~(8)(7)~~ (a) "Hazardous waste" means a waste or combination of wastes that, because of its quantity, concentration, or physical, chemical, or infectious characteristics, may:

~~(i)~~ cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness; or

~~(ii)~~ pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of or otherwise managed.

~~(b)~~ Hazardous wastes do not include those substances governed by Title 82, chapter 4, part 2.

~~(9)(8)~~ "Hazardous waste management" means the management of the collection, source separation, storage, transportation, processing, treatment, recovery, and disposal of hazardous wastes.

~~(10)(9)~~ "Hazardous waste transfer facility" means any land, structure, or improvement, including loading docks, parking areas, holding sites, and other similar areas, used for the transfer and temporary storage of hazardous wastes and where shipments of hazardous waste are temporarily held for a period of 10 days or less during the normal course of transportation up to but not including the point of ultimate treatment, storage, or disposal.

~~(11)(10)~~ "Manifest" means the shipping document that is originated and signed by the generator and

that is used to identify the hazardous waste and its quantity, origin, and destination during its transportation.

~~(12)(11)~~ "Person" means the United States, an individual, firm, trust, estate, partnership, company, association, corporation, city, town, local governmental entity, or any other governmental or private entity, whether organized for profit or not.

~~(13)(12)~~ "Remediation waste" means, for the purposes of fee assessment only, all hazardous waste, debris, and media, including ground water, surface water, soils, and sediments, that are managed for implementing cleanup.

~~(14)(13)~~ "Storage" means the actual or intended containment of hazardous wastes, either on a temporary basis or for a period of years.

~~(15)(14)~~ "Transportation" means the movement of hazardous wastes from the point of generation to any intermediate points and finally to the point of ultimate storage or disposal.

~~(16)(15)~~ "Transporter" means a person engaged in the offsite transportation of hazardous waste by air, rail, highway, or water.

~~(17)(16)~~ "Treatment" means a method, technique, or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any hazardous waste so as to neutralize the waste or so as to render it nonhazardous, safer for transportation, amenable for recovery, amenable for storage, or reduced in volume.

~~(18)(17)~~ "Used oil" means any oil that has been refined from crude oil or any synthetic oil, either of which has been used and as a result of that use is contaminated by physical or chemical impurities."

Section 103. Section 75-10-406, MCA, is amended to read:

"75-10-406. Permits. (1) A person may not construct or operate a hazardous waste management facility without first obtaining a permit from the department for the facility, except that the department may, by rule, prescribe conditions under which specified hazardous wastes or specified quantities of hazardous waste may be disposed of at solid waste disposal sites licensed by the department pursuant to Title 75, chapter 10, part 2.

(2) Any person who wishes to construct or operate a hazardous waste management facility shall apply to the department for a permit on forms provided by the department. An application must contain, at a

1 minimum, the name and business address of the applicant, the location of the proposed facility, a plan of
2 operation and maintenance, and a description of pertinent site characteristics.

3 (3) ~~A permit may be issued for a period specified by the department and is subject to renewal by the~~
4 ~~department upon a showing that the facility has been operated in accordance with the terms of the permit and~~
5 ~~the rules applicable to the facility and in compliance with the provisions of this part and any applicable order of~~
6 ~~the board or department.~~

7 (4) ~~Any permit issued is subject to revocation by the department for failure of the permittee to comply~~
8 ~~with the terms and conditions of the permit, the department rules, an order of the board or the department, or~~
9 ~~the provisions of this part. Any person who is denied a permit by the department or who has a permit revoked~~
10 ~~or modified shall must be afforded an opportunity for a hearing before the board department upon written~~
11 ~~application made within 30 days after service of notice of denial, revocation, or modification by mail. Service by~~
12 ~~mail is complete upon mailing.~~

13 (5) ~~Notwithstanding any other provisions of this part, the department may, in the event of an imminent~~
14 ~~and substantial danger to public health or the environment, issue a temporary emergency permit to any person~~
15 ~~for treatment, storage, or disposal of hazardous waste or to any facility to handle hazardous waste not covered~~
16 ~~by the existing facility permit. Emergency permits may be oral or written, may not exceed 90 days in duration,~~
17 ~~and may be terminated by the department at any time prior to 90 days.~~

18 (6) ~~The department may, as it considers appropriate, grant permits by rule to classes or categories of~~
19 ~~hazardous waste management facilities where the facility owner or operator is already licensed or permitted by~~
20 ~~the department pursuant to other state environmental statutes or where an interim period exists until final~~
21 ~~administrative disposition of a permit application is made.~~

22 (7) ~~In permits issued under this section, the department shall require corrective action for all releases~~
23 ~~of hazardous waste or constituents at a treatment, storage, or disposal facility, including corrective action for~~
24 ~~releases that extend beyond the facility boundaries if necessary to protect public health or the environment. A~~
25 ~~permit must contain a schedule of compliance for corrective action and requirements for assurance of financial~~
26 ~~responsibility for completion of the corrective action.~~

27 (8) ~~Each permit issued by the department to a person owning or operating a facility must contain the~~
28 ~~terms and conditions the department considers necessary to protect human health and the environment."~~

1
2 **Section 104.** Section 75-10-408, MCA, is amended to read:

3 ~~"75-10-408. Variances --- renewals. (1) A person who is a generator or transporter of hazardous~~
4 ~~wastes or who owns or operates a hazardous waste management facility may apply to the board~~ department
5 ~~for a variance or partial variance from the application of or compliance with any requirement of this part or any~~
6 ~~rule adopted under this part. The board~~ department ~~may grant a variance or partial variance if it finds that:~~

7 ~~(a) the applicant's actions or proposed actions regarding generation, transportation, treatment,~~
8 ~~storage, or disposal of hazardous wastes do not constitute a danger to public health or safety or cause~~
9 ~~substantially adverse environmental effects; and~~

10 ~~(b) the application of or compliance with the requirement or rule would produce unreasonable~~
11 ~~hardship without equal or greater benefits to the public.~~

12 ~~(2) No variance or partial variance may be granted except after public hearing on due notice and until~~
13 ~~the board has considered~~ department considers ~~the relative interests of the applicant, other persons specifically~~
14 ~~affected, and the general public.~~

15 ~~(3) No variance or partial variance may be granted for a period to exceed 1 year, but the variance or~~
16 ~~partial variance may be renewed for like periods if no complaint is made to the board~~ department ~~because of it~~
17 ~~or if, after the complaint has been made and duly considered at a public hearing held by the board~~ department
18 ~~on due notice, the board~~ department ~~finds that renewal is justified. No renewal may be granted except on~~
19 ~~application therefor~~ for renewal. ~~An application for renewal shall~~ must ~~be made in the manner and upon such~~
20 ~~notice as specified in rules promulgated under this part. A renewal pursuant to this subsection shall~~ must ~~be on~~
21 ~~the same grounds and subject to the same limitations and requirements as provided in subsection (1).~~

22 ~~(4) A variance, partial variance, or renewal thereof is not a right of the applicant or holder thereof of~~
23 ~~the variance, partial variance, or renewal but shall~~ must ~~be granted at the discretion of the board~~ department.
24 ~~However, a person adversely affected by a variance, partial variance, or renewal granted by the board~~
25 ~~department may obtain judicial review thereof as provided by the judicial review of contested case provisions of~~
26 ~~the Montana Administrative Procedure Act.~~

27 ~~(5) Nothing in this section and no variance, partial variance, or renewal granted pursuant to this~~
28 ~~section may be construed to prevent or limit the application of the emergency provisions and procedures of 75-~~

1 ~~10-415.~~

2 ~~(6) Under no conditions may a variance be granted by the board department that would result in a~~
3 ~~less stringent requirement or degree of control than would be imposed by the applicable federal regulations~~
4 ~~adopted under the federal Resource Conservation and Recovery Act."~~

5

6 **Section 105.** Section 75-10-409, MCA, is amended to read:

7 ~~"75-10-409. Compliance monitoring and reporting. (1) The department may, as a condition of a~~
8 ~~permit, require the owner or operator of a facility to install equipment, collect and analyze samples, and~~
9 ~~maintain records in order to monitor and demonstrate compliance with this part, rules adopted under this part,~~
10 ~~any order of the board or department, and permit conditions.~~

11 ~~(2) The department may require the owner or operator of a facility to submit reports on the~~
12 ~~compliance monitoring activities, including notice to the department of any noncompliance with permit~~
13 ~~conditions, rules adopted under this part, the provisions of this part, or any orders of the department or board."~~

14

15 **Section 106.** Section 75-10-413, MCA, is amended to read:

16 ~~"75-10-413. Administrative enforcement. (1) When the department believes that a violation of this~~
17 ~~part, a rule adopted under this part, or a permit provision has occurred, it may serve written notice of the~~
18 ~~violation personally or by certified mail on the alleged violator or the violator's agent. The notice must specify~~
19 ~~the provision of this part, the rule, or the permit provision alleged to be violated and the facts alleged to~~
20 ~~constitute a violation and may include an order to take necessary corrective action within a reasonable period of~~
21 ~~time stated in the order. The order becomes final unless, within 30 days after the notice is served, the person~~
22 ~~named requests, in writing, a hearing before the board department. On receipt of the request, the board~~
23 ~~department shall schedule a hearing. Service by mail is complete on the date of mailing.~~

24 ~~(2) If, after a hearing held under subsection (1), the board department finds that a violation has~~
25 ~~occurred, it shall either affirm or modify the department's order. An order issued by the department or by the~~
26 ~~board may prescribe the date by which the violation must cease and may prescribe time limits for particular~~
27 ~~action. If, after hearing, the board department finds that a violation has not occurred, it shall rescind the~~
28 ~~department's order.~~

~~(3) In addition to or instead of issuing an order pursuant to subsection (1), the department may:~~

~~(a) require the alleged violator to appear before the board or department, by subpoena or subpoena duces tecum, for a hearing at a time and place specified in the notice to answer the charges complained of or to provide information regarding the alleged violation or its actual or potential impact on public health and welfare or the environment; or~~

~~(b) initiate action under 75-10-414, 75-10-417, or 75-10-418.~~

~~(4) In the case of disobedience of any subpoena issued and served under this section or of the refusal of any witness to testify as to any material matter with regard to which the witness may be interrogated in a hearing or investigation before the board or the department, the board or department may apply to any district court in the state for an order to compel compliance with the subpoena or the giving of testimony. The court shall hear the matter as expeditiously as possible. If the disobedience or refusal is found to be unjustified, the court shall enter an order requiring compliance. Disobedience of the order is punishable by contempt of court in the same manner and by the same procedures as is provided for like conduct committed in the course of civil actions in district court.~~

~~(5) This section does not prevent the board or department from making efforts to obtain voluntary compliance through warning, conference, or any other appropriate means."~~

Section 107. Section 75-10-414, MCA, is amended to read:

~~"75-10-414. Injunctions.~~ The department may institute and maintain in the name of the state actions for injunctive relief as provided in Title 27, chapter 19, to:

~~(1) immediately restrain any person from engaging in any unauthorized activity which is endangering or causing damage to public health or the environment;~~

~~(2) enjoin a violation of this part, a rule adopted under this part, an order of the department or the board, or a permit provision without the necessity of prior revocation of the permit; or~~

~~(3) require compliance with this part, a rule adopted under this part, an order of the department or the board, or a permit provision."~~

Section 108. Section 75-10-417, MCA, is amended to read:

~~"75-10-417. Civil penalties. (1) A person who violates any provision of this part, a rule adopted under this part, an order of the department or the board, or a permit is subject to a civil penalty not to exceed \$10,000 for each violation. Each day of violation constitutes a separate violation. Penalties assessed under this section must be determined in accordance with the penalty factors in 75-1-1001.~~

~~(2) The department may institute and maintain in the name of the state any enforcement proceedings under this section. Upon request of the department, the attorney general or the county attorney of the county of violation shall petition the district court to impose, assess, and recover the civil penalty. An action to recover penalties must be brought in the district court of the county in which the violation occurred or, if mutually agreed on by the parties in the action, in the district court of the first judicial district, Lewis and Clark County.~~

~~(3) Action under this section does not bar:~~

~~(a) enforcement of this part, rules adopted under this part, orders of the department or the board, or permits by injunction or other appropriate remedy; or~~

~~(b) action under 75-10-418.~~

~~(4) Money collected under this section must be deposited in the state general fund."~~

Section 109. Section 75-10-418, MCA, is amended to read:

~~"75-10-418. Criminal penalties. (1) A person is guilty of an offense under this section if the person knowingly:~~

~~(a) transports any hazardous waste to an unpermitted facility;~~

~~(b) treats, stores, or disposes of hazardous waste subject to regulation under this part or the rules adopted under this part without a permit or contrary to a material permit condition;~~

~~(c) omits material information or makes any false statement or representation in any application, label, manifest, record, report, permit, or other document filed, maintained, or used for compliance with provisions of this part or rules adopted under this part pertaining to the handling of hazardous waste;~~

~~(d) generates, stores, treats, transports, disposes of, or otherwise handles any used oil or hazardous waste regulated under this part or rules adopted under this part and knowingly destroys, alters, conceals, or fails to file any record, application, manifest, report, or other document required to be maintained or filed in compliance with the provisions of this part, an order issued under this part, or rules adopted under this part; or~~

~~(e) transports or causes to be transported without a manifest any hazardous waste required to be accompanied by a manifest.~~

~~(2) A person who is guilty of an offense under subsection (1) is subject to a fine of not more than \$25,000 per violation or imprisonment for a period not to exceed 3 years, or both. Each day of violation constitutes a separate violation.~~

~~(3) A person who knowingly violates any requirement of this part or any rule or material permit condition issued pursuant to this part (except those violations specified in subsection (1)) regarding any hazardous waste that is subject to regulation is guilty of an offense and subject to a fine of up to \$5,000 per violation or subject to imprisonment not to exceed 6 months, or both. Each day of violation constitutes a separate violation.~~

~~(4) Upon a second conviction for a violation of this section, the maximum penalties specified in this section must be doubled.~~

~~(5) Action under this section does not bar enforcement of this part, rules made under this part, orders of the department or the board, or permits by injunction or other appropriate remedy.~~

~~(6) Money collected under this section, except money collected in a justice's court, must be deposited in the state general fund."~~

Section 110. Section 75-10-424, MCA, is amended to read:

"75-10-424. Administrative penalty. (1) The department may assess a person who violates a provision of this part or a rule adopted under this part an administrative penalty, not to exceed \$10,000 for each violation. Each day of violation constitutes a separate violation, but the maximum penalty may not exceed \$100,000 for any related series of violations. Assessment of an administrative penalty under this section must be made in conjunction with an order or administrative action authorized by this chapter.

~~(2) An administrative penalty may not be assessed under this section unless the alleged violator is given notice and opportunity for a hearing before the board department pursuant to Title 2, chapter 4, part 6.~~

~~(3) In determining the appropriate amount of an administrative penalty, the department shall consider the penalty factors in 75-1-1001.~~

~~(4) If the department is unable to collect the administrative penalty or if a person fails to pay all or any~~

1 portion of the administrative penalty as determined by the department, the department may file an action to
2 recover the amount not paid. The action must be brought in the district court of the county in which the violation
3 occurred or, if mutually agreed on by the parties in the action, in the district court of the first judicial district,
4 Lewis and Clark County.

5 ~~(5) Action under this section does not bar action under 75-10-413 through 75-10-418 or any other~~
6 ~~appropriate remedy.~~

7 ~~(6) Administrative penalties collected under this section must be deposited in the state general fund."~~

8
9 **Section 111.** Section 75-10-501, MCA, is amended to read:

10 **~~"75-10-501. (Temporary) Definitions.~~** Unless the context requires otherwise, in this part, the
11 ~~following definitions apply:~~

12 ~~(1) "Board" means the board of environmental review provided for in 2-15-3502.~~

13 ~~(2)(1) "Component part" means any identifiable part of a discarded, ruined, wrecked, or dismantled~~
14 ~~motor vehicle, including but not limited to fenders, doors, hoods, engine blocks, motor parts, transmissions,~~
15 ~~frames, axles, wheels, tires, and passenger compartment fixtures.~~

16 ~~(3)(2) "Department" means the department of environmental quality provided for in 2-15-3501.~~

17 ~~(4)(3) "Junk mobile home" means a mobile home as defined in 15-24-201 that is wrecked, ruined,~~
18 ~~dismantled, or abandoned and is no longer fit for human habitation.~~

19 ~~(5)(4) "Junk nonmotorized vehicle" means an inoperative vehicle that is not constructed with a motor~~
20 ~~and that is discarded, ruined, wrecked, or dismantled.~~

21 ~~(6)(5) (a) "Junk vehicle" means a motor vehicle, including component parts:~~

22 ~~(i) that is discarded, ruined, wrecked, or dismantled;~~

23 ~~(ii) that, except as provided in subsection(6)(b)(5)(b), is not lawfully and validly licensed; and~~

24 ~~(iii) that remains inoperative or incapable of being driven.~~

25 ~~(b) If a vehicle is permanently registered under 61-3-562 and meets the criteria for a junk vehicle~~
26 ~~under subsection (6)(a),(5)(a), the vehicle is a junk vehicle.~~

27 ~~(7)(6) "Motor vehicle graveyard" means a collection point established by a county for junk motor~~
28 ~~vehicles prior to their disposal.~~

~~(8)(7)~~ (a) "Motor vehicle wrecking facility" means:

~~(i) a facility buying, selling, or dealing in four or more vehicles a year, of a type required to be licensed, for the purpose of wrecking, dismantling, disassembling, or substantially changing the form of the motor vehicle; or~~

~~(ii) a facility that buys or sells component parts, in whole or in part, and deals in secondhand motor vehicle parts. A facility that buys or sells component parts of a motor vehicle, in whole or in part, is a motor vehicle wrecking facility whether or not the buying or selling price is based upon weight or any other type of classification.~~

~~(b) The term does not include a garage where wrecked or disabled motor vehicles are temporarily stored for a reasonable period of time for inspection, repairs, or subsequent removal to a junkyard.~~

~~(9)(8) "Person" means any individual, firm, partnership, company, association, corporation, city, town, local governmental entity, or other governmental or private entity, whether organized for profit or not.~~

~~(10)(9) "Public view" means any point 6 feet above the surface of the center of a public road from which junk vehicles can be seen.~~

~~(11)(10) "Shielding" means the construction or use of fencing or constructed or natural barriers to conceal junk vehicles from public view. (Terminates June 30, 2021--sec. 5, Ch. 427, L. 2019.)~~

~~75-10-501. (Effective July 1, 2021) Definitions.~~ Unless the context requires otherwise, in this part, the following definitions apply:

~~(1) "Board" means the board of environmental review provided for in 2-15-3502.~~

~~(2)(1) "Component part" means any identifiable part of a discarded, ruined, wrecked, or dismantled motor vehicle, including but not limited to fenders, doors, hoods, engine blocks, motor parts, transmissions, frames, axles, wheels, tires, and passenger compartment fixtures.~~

~~(3)(2) "Department" means the department of environmental quality provided for in 2-15-3501.~~

~~(4)(3) (a) "Junk vehicle" means a motor vehicle, including component parts:~~

~~(i) that is discarded, ruined, wrecked, or dismantled;~~

~~(ii) that, except as provided in subsection (4)(b), (3)(b), is not lawfully and validly licensed; and~~

~~(iii) that remains inoperative or incapable of being driven.~~

~~(b) If a vehicle is permanently registered under 61-3-562 and meets the criteria for a junk vehicle~~

1 under subsection (4)(a), ~~(3)(a)~~, the vehicle is a junk vehicle.

2 ~~(5)(4)~~ "Motor vehicle graveyard" means a collection point established by a county for junk motor
3 vehicles prior to their disposal.

4 ~~(6)(5)~~ (a) "Motor vehicle wrecking facility" means:

5 ~~(i)~~ a facility buying, selling, or dealing in four or more vehicles a year, of a type required to be
6 licensed, for the purpose of wrecking, dismantling, disassembling, or substantially changing the form of the
7 motor vehicle; or

8 ~~(ii)~~ a facility that buys or sells component parts, in whole or in part, and deals in secondhand motor
9 vehicle parts. A facility that buys or sells component parts of a motor vehicle, in whole or in part, is a motor
10 vehicle wrecking facility whether or not the buying or selling price is based upon weight or any other type of
11 classification.

12 ~~(b)~~ The term does not include a garage where wrecked or disabled motor vehicles are temporarily
13 stored for a reasonable period of time for inspection, repairs, or subsequent removal to a junkyard.

14 ~~(7)(6)~~ "Person" means any individual, firm, partnership, company, association, corporation, city, town,
15 local governmental entity, or other governmental or private entity, whether organized for profit or not.

16 ~~(8)(7)~~ "Public view" means any point 6 feet above the surface of the center of a public road from
17 which junk vehicles can be seen.

18 ~~(9)(8)~~ "Shielding" means the construction or use of fencing or constructed or natural barriers to
19 conceal junk vehicles from public view."

20
21 **Section 112.** Section 75-10-515, MCA, is amended to read:

22 **"75-10-515. Appeals.** A decision by the department to issue, deny, or revoke a motor vehicle
23 wrecking facility or graveyard license may be appealed to the board department within 30 days after receipt of
24 official notice of the department's decision."

25
26 **Section 113.** Section 75-10-540, MCA, is amended to read:

27 **"75-10-540. Administrative enforcement.** (1) When the department determines that a violation of
28 this part, a violation of a rule adopted or an order issued under this part, or a violation of a license provision has

1 occurred, it may serve written notice of the violation on the alleged violator or the violator's agent. The notice
2 must specify the law, rule, or license provision alleged to be violated and the facts alleged to constitute a
3 violation and may include an order to take necessary corrective action within a reasonable period of time, an
4 order assessing an administrative penalty pursuant to 75-10-542, or both. The order becomes final 30 days
5 after the notice is served unless the person named requests, in writing, a hearing before the board department.
6 On receipt of the request for a hearing, the board department shall schedule a hearing. Service by mail is
7 complete on the date of mailing.

8 (2) If, after a hearing held under subsection (1), the board department finds that a violation has
9 occurred, it shall either affirm or change the department's order. An order may prescribe the date by which the
10 violation must cease and may prescribe time limits for particular action. If, after a hearing, the board department
11 finds that a violation has not occurred, it shall rescind the department's order.

12 (3) The department shall make efforts to obtain voluntary compliance through warning, conference, or
13 any other appropriate means before issuing an order pursuant to subsection (1).

14 (4) The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4,
15 part 6, apply to a hearing held under this section."

16
17 **Section 114.** Section 75-10-714, MCA, is amended to read:

18 **"75-10-714. Administrative penalties.** (1) In lieu of proceeding under 75-10-711(5), the department
19 may assess penalties of not more than \$1,000 a day for each violation against a person liable under 75-10-
20 715(1) for a release or threat of release who has failed or refused to comply with an order issued by the
21 department pursuant to 75-10-711(4) or against a person who has failed or refused to comply with an order
22 issued by the department pursuant to 75-10-707(5).

23 (2) In determining the amount of any penalty assessed pursuant to this section, the department shall
24 take into account the nature, circumstances, extent, and gravity of the noncompliance and, with respect to the
25 person liable under 75-10-715(1):

26 (a) the person's ability to pay;

27 (b) any prior history of violations;

28 (c) the degree of culpability;

1 ~~(d) the economic benefit or savings, if any, resulting from the noncompliance; and~~

2 ~~(e) any other matters that justice may require.~~

3 ~~(3) An administrative penalty may not be collected pursuant to this section unless the person charged~~
4 ~~with the noncompliance is given notice and opportunity for a hearing with respect to the noncompliance. The~~
5 ~~hearing is before the board of environmental review the department. A hearing may be requested by submitting~~
6 ~~a written request stating the reason for the request within 30 days after receipt of the notice of penalty~~
7 ~~assessment.~~

8 ~~(4) The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4,~~
9 ~~part 6, apply to a hearing held under this section.~~

10 ~~(5) Administrative penalties collected under this section must be deposited in the environmental~~
11 ~~quality protection fund established in 75-10-704."~~

12
13 **Section 115.** Section 75-10-727, MCA, is amended to read:

14 ~~"75-10-727. Institutional controls. (1) An owner of real property may, with department approval,~~
15 ~~restrict the use of the owner's real property to mitigate the risk posed to the public health, safety, and welfare~~
16 ~~and the environment by imposing on the real property, without conveying the property or creating a dominant~~
17 ~~and servient estate, an appropriate institutional control.~~

18 ~~(2) An institutional control restricting present and future real property rights is placed on a property by~~
19 ~~filing a written instrument evidencing the restrictions to be placed on the use of the property with the county~~
20 ~~clerk in the county in which the property is located.~~

21 ~~(3) An institutional control that restricts real property runs with the land and is binding on all~~
22 ~~successors in interest to real property until the institutional control is removed.~~

23 ~~(4) An institutional control must be removed if there is not an unacceptable risk posed to public~~
24 ~~health, safety, and welfare and the environment. An owner may request department approval to remove all or a~~
25 ~~portion of the institutional controls from the real property. The department shall review the request and provide~~
26 ~~the owner with its decision to approve or deny the request within 120 days from the department's receipt of the~~
27 ~~request. If the department denies the request, it shall provide the owner with a written explanation of the denial.~~
28 ~~A department decision to deny the request may be appealed to the board of environmental review department~~

and conducted as a contested case proceeding pursuant to Title 2, chapter 4.

(5) If the department or the board approves an owner's request to remove all or a portion of the institutional controls, the owner shall file the approval with the county clerk in the county in which the real property is located."

Section 116. Section 75-10-732, MCA, is amended to read:

"75-10-732. Eligibility. (1) A facility where there has been a release or threatened release of a hazardous or deleterious substance that may present an imminent and substantial endangerment to the public health, safety, or welfare or the environment may be eligible for voluntary cleanup procedures under this part, except for facilities that meet one of the following criteria at the time of application for a voluntary cleanup plan:

(a) a facility that is listed or proposed for listing on the national priorities list pursuant to 42 U.S.C. 9601, et seq.;

(b) a facility for which an order has been issued or consent decree has been entered into pursuant to this part;

(c) a facility that is the subject of an agency order or an action filed in district court by any state agency that addresses the release or threatened release of a hazardous or deleterious substance; or

(d) a facility where the release or threatened release of a hazardous or deleterious substance is regulated by the Montana Hazardous Waste Act and regulations under that act; or

(e) a facility that is the subject of pending action under this part because the facility has been issued a notice commencing a specified period of negotiations on an administrative order on consent.

(2) Notwithstanding the provisions of subsections (1)(b) through (1)(e), the department may agree to accept and may approve an application for a voluntary cleanup plan for a facility.

(3) The department may determine that a facility that is potentially eligible for voluntary cleanup exhibits complexities regarding protection of public health, safety, and welfare and the environment and that the complexities should be addressed under an administrative order or consent decree pursuant to this part. This determination may be made only after consultation with any person desiring to conduct a voluntary cleanup at the facility.

(4) If an applicant who submits an application for a voluntary cleanup plan disagrees with the

department's decision to reject the filing of the application under subsection (1) or (3) or disagrees with the department's decision to disapprove the voluntary cleanup plan submitted pursuant to 75-10-736, the applicant may, within 30 days of receipt of the department's written decision pursuant to 75-10-736, submit a written request for a hearing before the board of environmental review department. In reviewing a department decision to reject an application under subsection (1) or (3) or to disapprove a voluntary cleanup plan submitted pursuant to 75-10-736, the board department shall apply the standards of review specified in 2-4-704. The hearing must be held within 2 months at the regular meeting of the board or at the time mutually agreed to by the board, the department, and the applicant. The hearing and any appeals must be conducted in accordance with the contested case proceedings pursuant to Title 2, chapter 4, parts 6 and 7. A hearing before the board may not be requested regarding a decision of the department made pursuant to subsection (2)."

Section 117. Section 75-10-736, MCA, is amended to read:

"75-10-736. Approval of voluntary cleanup plan — time limits — content of notice — expiration of approval. (1) The department shall review for completeness, including adequacy and accuracy, in accordance with the requirements of 75-10-734, the environmental assessment component of a voluntary cleanup plan and shall provide a written completeness notice to the applicant within 30 days of receipt. The completeness notice must note all deficiencies identified in the information submitted.

(2) Once the department determines that the environmental assessment component of a voluntary cleanup plan is complete, the applicant may submit the remediation proposal component. The department shall review the remediation proposal for completeness, including adequacy and accuracy, in accordance with the requirements of 75-10-734, and shall provide a written completeness notice to the applicant within 30 days of receipt. The completeness notice must note all deficiencies identified in the information submitted.

(3) Once the department determines that the application for a voluntary cleanup plan is complete pursuant to subsections (1) and (2), the department shall provide formal written notification of approval or disapproval within 60 days unless the applicant and the department agree to an extension of the review to a date certain. The review must be limited to a review of the materials submitted by the applicant, public comments, and documents or information readily available to the department. The department shall communicate with the applicant during the review period to ensure that the applicant has the opportunity to

1 address the public comments.

2 ~~(4) (a) If the department receives five applications for review of either component of a voluntary~~
3 ~~cleanup plan in a calendar month, including applications deferred from prior months, the department may notify~~
4 ~~any additional applicants in that month that their plans must be reviewed in the order received. The 60-day~~
5 ~~period for department completeness review of deferred applications must begin on the first day of the~~
6 ~~subsequent month that each plan is eligible for review.~~

7 ~~(b) The department shall discontinue accepting either component of voluntary cleanup applications~~
8 ~~when 15 applications are pending and are being reviewed by the department. The department shall establish a~~
9 ~~waiting list for applications and shall consider the applications in order of submittal.~~

10 ~~(c) If the department has received multiple applications for a voluntary cleanup at the same facility,~~
11 ~~the department shall notify all of the applicants and offer them the opportunity to submit a joint application.~~

12 ~~(5) Consistent with the provisions of 75-10-707, the department may access the facility during review~~
13 ~~of either component of the application and implementation of the voluntary cleanup plan to confirm information~~
14 ~~provided by the applicant and verify that the cleanup is being conducted consistent with the approved plan.~~

15 ~~(6) (a) The department shall approve a voluntary cleanup plan if the department concludes that the~~
16 ~~plan meets the requirements specified in 75-10-734 and will attain a degree of cleanup and control of~~
17 ~~hazardous or deleterious substances that complies with the requirements of 75-10-721.~~

18 ~~(b) Except for the period necessary for the operation and maintenance of the approved remediation~~
19 ~~proposal, the department may not approve a voluntary remediation proposal that would:~~

20 ~~(i) take longer than 60 months after department approval to achieve the cleanup levels proposed by~~
21 ~~the applicant under 75-10-734(3)(a)(i) and approved by the department; or~~

22 ~~(ii) take longer than 120 months after department approval to achieve the cleanup levels for ground~~
23 ~~water proposed by the applicant under 75-10-734(3)(a)(i) and approved by the department, including ground~~
24 ~~water standards identified as applicable or relevant state or federal environmental requirements, criteria, or~~
25 ~~limitations pursuant to 75-10-721.~~

26 ~~(7) If a voluntary cleanup plan is not approved by the department, the department shall promptly~~
27 ~~provide the applicant with a written statement of the reasons for denial. The denial may be appealed to the~~
28 ~~board of environmental review department in accordance with the provisions of 75-10-732(4).~~

~~(8) The approval of a voluntary cleanup plan by the department applies only to conditions at the facility that are known to the department at the time of department approval. If a voluntary remediation proposal is not initiated within 12 months and, except for the period necessary for the operation and maintenance of the approved remediation proposal, is not completed within 60 months after approval by the department, the department's approval lapses. However, the department may grant an extension of the time limit for completion of the voluntary cleanup plan.~~

~~(9) If conditions are discovered during implementation of a voluntary cleanup plan that were not identified in the environmental assessment component pursuant to subsection (1), affect the risk to public health, safety, or welfare or the environment, and change the scope of the approved plan, the applicant shall notify the department within 10 days of discovery. The department may require the applicant to submit an amendment to the approved plan to address the conditions or may determine that a voluntary cleanup plan is no longer appropriate pursuant to 75-10-732(3).~~

~~(10) Departmental approval is void if the applicant or the applicant's agents:~~

~~(a) fail to materially comply with the voluntary cleanup plan;~~

~~(b) submit materially misleading information in the application or during implementation of the voluntary cleanup plan; or~~

~~(c) fail to report any newly discovered information to the department during the application process or implementation of the voluntary cleanup plan regarding releases or threatened releases of hazardous or deleterious substances within 10 days of discovery of that information.~~

~~(11) Within 60 days after completion of the approved remediation proposal described in the voluntary cleanup plan approved by the department, the applicant shall provide to the department a certification from a qualified environmental professional that the plan has been fully implemented, including all documentation necessary to demonstrate the successful implementation of the plan, such as confirmation sampling, if necessary.~~

~~(12) Except as provided in 75-10-738(2)(b), the department may not require financial assurance under this part for voluntary cleanup plans approved under this section.~~

~~(13) If a person who would otherwise not be a liable person under 75-10-715(1) elects to undertake an approved voluntary cleanup plan, the person may not become a liable person under 75-10-715(1) by~~

1 undertaking a voluntary cleanup if the person materially complies with the voluntary cleanup plan approved by
2 the department pursuant to this section.

3 ~~(14) Immunity from liability under this section does not apply to a release that is caused by conduct~~
4 ~~that is negligent or grossly negligent or that constitutes intentional misconduct."~~

5
6 **Section 118.** Section 75-10-1201, MCA, is amended to read:

7 **~~"75-10-1201. Definitions.~~** As used in this part, the following definitions apply:

8 ~~(1) "Board" means the board of environmental review provided for in 2-15-3502.~~

9 ~~(2)(1) "Department" means the department of environmental quality provided for in 2-15-3501.~~

10 ~~(3)(2) "Disposal" means the discharge, injection, deposit, dumping, spilling, leaking, or placing of~~
11 ~~septage into or onto the land or water.~~

12 ~~(4)(3) "Domestic sewage" means waste and wastewater from humans or household operations that~~
13 ~~are discharged to or otherwise enter a treatment works.~~

14 ~~(5)(4) "Industrial wastewater" means wastewater generated in a commercial or industrial process.~~

15 ~~(6)(5) "Person" means an individual, firm, partnership, association, corporation, city, town, local~~
16 ~~government entity, or other government or private entity, whether organized for profit or not.~~

17 ~~(7)(6) (a) "Septage" means liquid or solid material removed from a septic tank, cesspool, portable~~
18 ~~toilet, or similar treatment works that receives only domestic sewage.~~

19 ~~(b) Septage does not include material removed from a septic tank, cesspool, or similar treatment~~
20 ~~works that receives industrial wastewater and does not include grease removed from a grease trap at a~~
21 ~~restaurant.~~

22 ~~(8)(7) "Treatment works" means a publicly owned or privately owned device or system used to treat,~~
23 ~~including to recycle and to reclaim, either domestic sewage or a combination of domestic sewage and industrial~~
24 ~~waste of a liquid nature."~~

25
26 **Section 119.** Section 75-10-1221, MCA, is amended to read:

27 **~~"75-10-1221. Department revocation or denial of license.~~** The department may deny or revoke a
28 ~~license after giving the applicant written notice and an opportunity for a hearing before the board. The decision~~

1 to deny or revoke a license may be made only after a finding that a business or disposal site cannot be
2 operated or is not being operated in compliance with this part or a rule or order issued pursuant to this part. The
3 hearing held before the board on a denial or revocation must be held pursuant to the provisions of the Montana
4 Administrative Procedure Act."

5
6 **Section 120.** Section 75-10-1222, MCA, is amended to read:

7 **"75-10-1222. Administrative enforcement.** (1) If the department believes that a violation of this part,
8 a rule adopted under this part, or an order issued under this part has occurred, it may serve written notice of the
9 violation, by certified mail, on the alleged violator or the violator's agent. The notice must specify the provision
10 of this part, the rule, or the condition of approval alleged to have been violated and the facts alleged to
11 constitute a violation. The notice must include an order to take necessary corrective action within a reasonable
12 period of time. The time period must be stated in the order. Service is complete on the date of mailing.

13 (2) If the alleged violator does not request a hearing before the board department within 30 days of
14 the date of service, the order is final. Failure to comply with a final order may subject the violator to an action
15 commenced pursuant to 75-10-1221.

16 (3) If the alleged violator requests a hearing before the board within 30 days of the date of service,
17 the board department shall schedule a hearing. After the hearing is held, the board department may:

18 (a) affirm or modify the department's order issued under subsection (1) if the board department finds
19 that a violation has occurred; or

20 (b) rescind the department's order if the board department finds that a violation has not occurred.

21 (4) An order issued by the department or the board may set a date by which the violation must cease
22 and set a time limit for the violator to correct the violation.

23 (5) (a) An action initiated by the department under this section may include an administrative penalty
24 not to exceed \$500 for each day of violation. Administrative penalties collected under this section must be
25 deposited in the account provided for in 75-10-1203.

26 (b) Penalties assessed under this section must be determined in accordance with the penalty factors
27 in 75-1-1001.

28 (6) The contested case provisions of the Montana Administrative Procedure Act, provided for in Title

2, chapter 4, part 6, apply to a hearing under this section."

Section 121. Section 75-11-203, MCA, is amended to read:

"75-11-203. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Board" means the board of environmental review provided for in 2-15-3502.

(2)(1) "Closure" or "to close" means the process of properly removing or filling in place an underground storage tank that is no longer in service.

(3)(2) "Department" means the department of environmental quality provided for in 2-15-3501.

(4)(3) "Inspection" means activities to inspect all or part of an underground storage tank system, including records relating to installation, operation, maintenance, and closure to determine compliance with applicable laws and rules relating to operation and maintenance.

(5)(4) "Inspector" means an individual who performs inspections of underground storage tank systems.

(6)(5) (a) "Installation" or "to install" means the placement of an underground storage tank system, including excavation, tank placement, backfilling, and piping of underground portions of the underground storage tank system that store or convey regulated substances. Installation includes repair or modification of an underground storage tank system through such means as tank relining or the repair or replacement of valves, fillpipes, piping, vents, or in-tank liquid level monitoring systems. Installation also means installation, repair, or modification of a leak detection device that is external to and not attached to the underground storage tank system and the installation, repair, or modification of a cathodic protection system.

(b) The terms do not include the process of conducting a precision (tightness) test to establish the integrity of the underground storage tank system.

(7)(6) "Installer" means an individual who installs or closes underground storage tank systems.

(8)(7) "License" means a license issued by the department under 75-11-204 or 75-11-210 to conduct the inspection, installation, or closure of underground storage tank systems.

(9)(8) "Licensed inspector" means an individual who holds a valid underground storage tank system inspector license.

~~(10)(9) "Licensed installer" means an individual who holds a valid underground storage tank system installer license.~~

~~(11)(10) "Operator" means a person in control of or having responsibility for the operation, maintenance, or management of an underground storage tank system.~~

~~(12)(11) "Owner" means a person who owns an underground storage tank system used for the storage, use, or dispensing of regulated substances.~~

~~(13)(12) "Person" means an individual, firm, trust, estate, partnership, company, association, corporation (whether organized for profit or not), city, town, local governmental entity, or any other governmental or private entity.~~

~~(14)(13) "Regulated substance" means a regulated substance as defined in 75-11-503.~~

~~(15)(14) "Underground storage tank" or "underground storage tank system" means an underground storage tank, as defined in 75-11-503, and, for purposes of this part, includes ancillary equipment designed to prevent, detect, or contain a release from an underground storage tank system."~~

Section 122. Section 75-11-211, MCA, is amended to read:

~~"75-11-211. Denial, modification, suspension, or revocation of installer or inspector license--~~
~~grounds.~~ ~~(1) The department may deny, modify, condition, suspend, or revoke a license if the installer or inspector:~~

~~(a) fails to achieve a passing grade on a written examination;~~

~~(b) fails to pay the license fee imposed under this part;~~

~~(c) commits fraud or deceit with respect to the license or permit application or an inspection report submitted to the department;~~

~~(d) has had suspended or revoked:~~

~~(i) a license issued under this part; or~~

~~(ii) a similar license in another state or territory; or~~

~~(e) violates any state or federal law, rule, permit, or order relating to the installation or closure of an underground storage tank system.~~

~~(2) If the department modifies, conditions, suspends, or revokes a license, it shall inform the~~

1 applicant or license holder in writing of the reason for the action. The applicant or license holder may request a
2 hearing before the board department. If the board department grants a hearing, the hearing must be held in
3 accordance with the provisions of the Montana Administrative Procedure Act."

4
5 **Section 123.** Section 75-11-218, MCA, is amended to read:

6 **~~"75-11-218. Administrative enforcement.~~** (1) When the department believes that a person has
7 violated this part, a rule adopted under this part, or a permit provision, it may serve written notice of the violation
8 on the person or the person's agent. The notice must specify the alleged violation and the facts that constitute
9 the alleged violation. The notice may include an order to provide information pertaining to the installation,
10 closure, or inspection, an order to take necessary corrective action within a reasonable time as stated in the
11 order, or an order assessing an administrative penalty pursuant to 75-11-223. A notice and order must be
12 signed by the director of the department or the director's designee and must be served personally or by certified
13 mail upon the person or the person's agent. The order becomes final unless, within 30 days after the notice is
14 served, the person requests in writing a hearing before the board department. On receipt of the request, the
15 board department shall schedule a hearing. Service by mail is complete on the date of mailing.

16 (2) If, pursuant to a hearing held under subsection (1), the board department finds that a violation has
17 occurred, it shall either affirm or modify the department's order. An order issued by the department or the board
18 may prescribe the date by which the violation must cease and may prescribe time limits for particular action. If,
19 after a hearing, the board department finds that a violation has not occurred, it shall rescind the department's
20 order.

21 (3) In addition to or instead of issuing an order pursuant to subsection (1), the department may either:

22 (a) require the alleged violator to appear before the board department for a hearing at a time and
23 place specified in the notice and answer the charges described in the notice of violation; or

24 (b) initiate action under 75-11-219, 75-11-223, or 75-11-224.

25 (4) This section does not prevent the board or department from attempting to obtain voluntary
26 compliance through issuance of a warning, a conference, or any other appropriate administrative or judicial
27 means.

28 (5) The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4,

part 6, apply to a hearing held under this section."

Section 124. Section 75-11-219, MCA, is amended to read:

"75-11-219. Injunctions. The department may institute and maintain in the name of the state actions for injunctive relief as provided in Title 27, chapter 19, to:

(1) immediately restrain any person from engaging in unauthorized activity that is endangering public health or causing damage to the environment;

(2) enjoin a violation of this part, a rule adopted under this part, or an order of the department or the board; or

(3) require compliance with this part, a rule adopted under this part, or an order of the department or the board."

Section 125. Section 75-11-223, MCA, is amended to read:

"75-11-223. Civil and administrative penalties. (1) (a) A person who violates a provision of this part, a rule adopted under this part, or an order of the department or the board is subject to an administrative penalty not to exceed \$500 for each violation or a civil penalty not to exceed \$10,000 for each violation. If an installer or an inspector who is an employee is in violation, the employer of that installer or that inspector is the entity that is subject to the provisions of this section unless the violation is the result of a grossly negligent or willful act. Each day of violation of this part, a rule adopted under this part, or an order constitutes a separate violation.

(b) Penalties assessed under this subsection (1) must be determined in accordance with the penalty factors in 75-1-1001.

(2) The department may institute and maintain in the name of the state any enforcement proceedings under this section. The enforcement or collection action must be brought in the district court of the county in which the violation occurred or, if mutually agreed upon by the parties, in the district court of the first judicial district, Lewis and Clark County. Upon request of the department, the attorney general or the county attorney of the county where the violation occurred shall petition the district court to impose, assess, and recover the civil penalty.

1 ~~(3) Action under this section does not bar:~~

2 ~~(a) enforcement of this part, rules adopted under this part, orders of the department or the board, or~~
3 ~~terms of a license or permit by injunction or other appropriate remedy; or~~

4 ~~(b) action under 75-11-224."~~

5
6 **Section 126.** Section 75-11-224, MCA, is amended to read:

7 ~~"75-11-224. Criminal penalties. (1) Any owner or operator who knowingly installs or closes an~~
8 ~~underground storage tank system without a permit and either an inspection or the use of the services of a~~
9 ~~licensed installer as required in 75-11-209; any installer who knowingly installs or closes an underground~~
10 ~~storage tank system without being licensed; or any person who knowingly makes any false statements or~~
11 ~~representations in any application, permit, report, licensing form, or other document filed or maintained as~~
12 ~~required by this part or required by rules adopted under this part is subject to a fine not to exceed \$10,000 for~~
13 ~~each violation or imprisonment not to exceed 6 months, or both. Each day of violation constitutes a separate~~
14 ~~violation.~~

15 ~~(2) A person convicted of a second or subsequent criminal violation is subject to a fine not to exceed~~
16 ~~\$20,000 for each violation or imprisonment not to exceed 1 year, or both. Each day of violation constitutes a~~
17 ~~separate violation.~~

18 ~~(3) Action under this section does not bar enforcement of this part, rules adopted under this part,~~
19 ~~orders of the department or the board, or terms of a license or permit by injunction or other appropriate remedy."~~

20
21 **Section 127.** Section 75-11-503, MCA, is amended to read:

22 ~~"75-11-503. Definitions. Unless the context requires otherwise, in this part, the following definitions~~
23 ~~apply:~~

24 ~~(1) "Board" means the board of environmental review provided for in 2-15-3502.~~

25 ~~(2)(1) "Department" means the department of environmental quality provided for in 2-15-3501.~~

26 ~~(3)(2) "Dispose" or "disposal" means the discharge, injection, deposit, dumping, spilling, leaking, or~~
27 ~~placing of any regulated substance into or onto the land or water so that the regulated substance or any~~
28 ~~constituent of the regulated substance may enter the environment or be emitted into the air or discharged into~~

1 any waters, including ground water.

2 ~~(4)(3) "Person" means the United States, an individual, firm, trust, estate, partnership, company,~~
3 ~~association, corporation, city, town, local governmental entity, or any other governmental or private entity,~~
4 ~~whether organized for profit or not.~~

5 ~~(5)(4) "Petroleum mixing zone" means an area where water quality standards for petroleum and~~
6 ~~petroleum constituents may be exceeded subject to the conditions of 75-11-508 and consistent with rules~~
7 ~~adopted under 75-11-318, 75-11-319, and 75-11-505.~~

8 ~~(6)(5) "Regulated substance":~~

9 ~~(a) means:~~

10 ~~(i) a hazardous substance as defined in 75-10-602; or~~

11 ~~(ii) petroleum, including crude oil or any fraction of crude oil, that is liquid at standard conditions of~~
12 ~~temperature and pressure (60 degrees F and 14.7 pounds per square inch absolute);~~

13 ~~(b) does not include a substance regulated as a hazardous waste under Title 75, chapter 10, part 4.~~

14 ~~(7)(6) "Storage" means the actual or intended containment of regulated substances, either on a~~
15 ~~temporary basis or for a period of years.~~

16 ~~(8)(7) "Underground storage tank" or "tank":~~

17 ~~(a) means, except as provided in subsections (8)(b)(i) through (8)(b)(xii) subsection (7)(b):~~

18 ~~(i) any one or a combination of tanks used to contain a regulated substance, the volume of which is~~
19 ~~10% or more beneath the surface of the ground;~~

20 ~~(ii) any underground pipes used to contain or transport a regulated substance and connected to a~~
21 ~~storage tank, whether the storage tank is entirely above ground, partially above ground, or entirely under~~
22 ~~ground; and~~

23 ~~(iii) ancillary equipment designed to prevent, detect, or contain a release from an underground storage~~
24 ~~tank;~~

25 ~~(b) does not include:~~

26 ~~(i) a farm or residential tank that was installed as of April 27, 1995, that has a capacity of 1,100~~
27 ~~gallons or less and that is used for storing motor fuel for noncommercial purposes;~~

28 ~~(ii) a farm or residential tank that was installed as of April 27, 1995, that has a capacity of 1,100 gallons~~

or less and that is used for storing heating oil for consumptive use on the premises where it is stored;
 (iii) ~~farm or residential underground pipes that were installed as of April 27, 1995, and that are used to~~
~~contain or to transport motor fuels for noncommercial purposes or heating oil for consumptive use on the~~
~~premises where it is stored from an aboveground storage tank with a capacity of 1,100 gallons or less;~~
 (iv) ~~a septic tank;~~
 (v) ~~a pipeline facility, including gathering lines, regulated under:~~
 (A) ~~the Natural Gas Pipeline Safety Act of 1968, 49 U.S.C. 1671, et seq.;~~
 (B) ~~the Hazardous Liquid Pipeline Safety Act of 1979, 49 U.S.C. 2001, et seq.; or~~
 (C) ~~state law comparable to the provisions of law referred to in subsection (8)(b)(v)(A) or~~
~~(8)(b)(v)(B), (7)(b)(v)(A) or (7)(b)(v)(B) if the facility is intrastate;~~
 (vi) ~~a surface impoundment, pit, pond, or lagoon;~~
 (vii) ~~a storm water or wastewater collection system;~~
 (viii) ~~a flow-through process tank;~~
 (ix) ~~a liquid trap or associated gathering lines directly related to oil or gas production and gathering~~
~~operations;~~
 (x) ~~a storage tank situated in an underground area, such as a basement, cellar, mine, draft, shaft, or~~
~~tunnel, if the storage tank is situated upon or above the surface of the floor;~~
 (xi) ~~any pipe connected to a tank described in subsections (8)(b)(i) through (8)(b)(ix), (7)(b)(i) through~~
~~(7)(b)(ix); or~~
 (xii) ~~underground pipes connected to an aboveground storage tank at a petroleum refinery that is~~
~~subject to:~~
 (A) ~~facilitywide corrective action permit provisions under 75-10-406 or the federal Resource~~
~~Conservation and Recovery Act of 1976, 42 U.S.C. 6901 through 6987, as amended; or~~
 (B) ~~a facilitywide corrective action order under 75-10-425 or the federal Resource Conservation and~~
~~Recovery Act of 1976, 42 U.S.C. 6901 through 6987, as amended."~~

Section 68. Section 75-11-505, MCA, is amended to read:

"75-11-505. Administrative rules -- underground storage tanks -- petroleum mixing zones. (1)

1 The department may adopt, amend, or repeal rules for the prevention and correction of leakage from
2 underground storage tanks, including:

- 3 (a) reporting by owners and operators;
- 4 (b) financial responsibility;
- 5 (c) release detection, prevention, and corrective action;
- 6 (d) procedures and standards for the issuance, nonissuance, renewal, nonrenewal, modification,
7 revocation, suspension, and enforcement of permits authorizing the operation of underground storage tanks;
- 8 (e) standards for design, construction, installation, and closure;
- 9 (f) development of a schedule of annual fees, not to exceed \$108 for a tank over 1,100 gallons and
10 not to exceed \$36 for a tank 1,100 gallons or less, for each tank, for tank registration to defray state and local
11 costs of implementing an underground storage tank program. The department may prorate fees to cover
12 periods not equal to 12 months in order to provide staggered scheduling of renewal dates.
- 13 (g) a system for assessment of administrative penalties, notice, and appeals under 75-11-525; and
- 14 (h) delegation of authority and funds to local agents for inspections and implementation. The
15 delegation of authority to local agents must complement and may not duplicate existing authority for
16 implementation of rules adopted by the department of justice that relate to underground storage tanks.

17 (2) In accordance with 75-11-508, the department:

- 18 (a) shall adopt rules governing the inclusion of a petroleum mixing zone, as defined in 75-11-503, in a
19 corrective action plan; and
- 20 (b) may incorporate by reference rules adopted by the board of environmental review pursuant to 75-
21 5-301 and 75-5-303 related to mixing zones for ground water."

22
23 **Section 69.** Section 75-11-508, MCA, is amended to read:

24 **"75-11-508. Corrective action -- petroleum mixing zones.** (1) A corrective action plan prepared
25 pursuant to 75-11-309 may include the use of a petroleum mixing zone, as defined in 75-11-503, in conjunction
26 with the final remediation and resolution of a petroleum release.

27 (2) If a petroleum mixing zone is included in a corrective action plan, it may be established only when:

28 (a) all source material has been removed to the maximum extent practicable;

(b) the extent of petroleum contamination has been defined;

(c) natural breakdown or attenuation is occurring within the plume; and

(d) no further corrective action is reasonably required at the site.

(3) The boundary of a petroleum mixing zone established in accordance with this section must be contained within the boundary of the property on which the petroleum release originated unless a recorded easement, a restrictive covenant, or another institutional control approved by the department on an adjoining property allows the petroleum mixing zone to extend onto the adjoining property.

(4) Monitoring of a petroleum mixing zone may not be required unless there is a unique, overriding, site-specific, impact-related reason to require monitoring.

(5) At the downgradient boundary of a petroleum mixing zone, the concentration of any petroleum constituent, including benzene, may not exceed a water quality standard adopted by the board pursuant to 75-5-301.

(6) If a petroleum mixing zone is established and maintained:

(a) the petroleum release is considered to be resolved;

(b) no further corrective action for the petroleum release is required; and

(c) the department shall issue a no-further-action letter to the owner or operator stating that a petroleum mixing zone has been established for the release and describing any conditions required to maintain the petroleum mixing zone.

(7) A corrective action plan approved by the department pursuant to 75-11-309 may be amended to include a petroleum mixing zone in accordance with this section, including a corrective action plan approved prior to April 15, 2011."

Section 130. ~~Section 75-11-509, MCA, is amended to read:~~

~~"75-11-509. Inspections -- permits. (1) The owner or operator of an active underground storage tank must have the tank inspected for compliance with this part by January 1, 2002, and at least once every 3 years thereafter by an inspector who is licensed pursuant to Title 75, chapter 11, part 2, to perform underground storage tank inspections. The inspector may not be:~~

~~(a) the owner or operator of the tank;~~

1 ~~(b) an employee of the owner or operator; or~~

2 ~~(c) for the first inspection required by this subsection (1) and for a period of 3 years after the~~
3 ~~installation or modification of the tank was completed, the installer who installed or modified the tank and whose~~
4 ~~name or signature was on the permit required by 75-11-212.~~

5 ~~(2) The owner or operator of an inactive underground storage tank shall comply with requirements for~~
6 ~~testing, inspection, recordkeeping, and reporting provided in rules adopted pursuant to this part.~~

7 ~~(3) The department may by rule authorize temporary permits for the installation, testing, and operation~~
8 ~~of underground storage tanks. The requirements in subsection (8) for a 3-year permit term and for permit~~
9 ~~issuance only after inspection by a licensed inspector do not apply to temporary permits.~~

10 ~~(4) The department shall by rule provide:~~

11 ~~(a) requirements for the scope and timing of inspections; and~~

12 ~~(b) requirements for testing, inspection, recordkeeping, and reporting for inactive tanks to ensure that~~
13 ~~these tanks do not pose a threat to public health, safety, or the environment while inactive or upon their return~~
14 ~~to active status.~~

15 ~~(5) The inspector shall provide the owner or operator with an inspection report that meets the~~
16 ~~requirements of rules adopted by the department to ensure compliance with this part and rules adopted~~
17 ~~pursuant to this part.~~

18 ~~(6) The owner or operator shall retain the original inspection report and mail a copy to the department.~~

19 ~~(7) If the inspection report indicates violations, the owner or operator shall correct the violations and~~
20 ~~obtain a followup inspection. Followup inspection reports must be provided to the owner or operator and to the~~
21 ~~department.~~

22 ~~(8) A person may not place a regulated substance in an underground storage tank unless the owner~~
23 ~~or operator has been issued a valid permit from the department for the tank. Permits must be issued for a term~~
24 ~~of 3 years. The department may not issue or renew a permit unless the owner or operator has filed with the~~
25 ~~department an inspection report by a licensed inspector. Prior to issuing or renewing a permit, the department~~
26 ~~shall determine, on the basis of the inspection report and other relevant information, whether the operation and~~
27 ~~maintenance of the tank were in compliance with this part and rules adopted pursuant to this part on the date of~~
28 ~~inspection.~~

~~(9) The department may determine to not issue or not renew a permit for a tank if the department finds that there has been significant noncompliance with this part or with rules, permits, or orders issued pursuant to this part. If the department proposes to not issue or not renew a permit, it must have a written notice letter served personally or by certified mail on the owner or operator informing the owner or operator of the reason for the action. The owner or operator may request a hearing before the board department. The hearing request must be in writing and must be filed with the board no later than 30 days after the service of the notice letter. The contested case provisions of the Montana Administrative Procedure Act, provided for in Title 2, chapter 4, part 6, apply to a hearing conducted under this section."~~

Section 131. Section 75-11-512, MCA, is amended to read:

~~"**75-11-512. Administrative enforcement.** (1) When the department believes that a violation of this part or a rule adopted under this part has occurred, it may serve written notice of the violation personally or by certified mail on the alleged violator or the violator's agent. The notice must specify the provision of this part or the rule alleged to be violated and the facts alleged to constitute a violation and may include an order to take necessary corrective action within a reasonable period of time stated in the order. The order becomes final unless, within 30 days after the notice is served, the person named requests, in writing, a hearing before the board department. On receipt of the request, the board department shall schedule a hearing. Service by mail is complete on the date of receipt.~~

~~(2) If, after a hearing held under subsection (1), the board department finds that a violation has occurred, it shall either affirm or modify the department's order. An order issued by the department or by the board may prescribe the date by which the violation must cease and may prescribe time limits for particular action. If, after hearing, the board department finds that a violation has not occurred, it shall rescind the department's order.~~

~~(3) In addition to or instead of issuing an order pursuant to subsection (1), the department may:~~

~~(a) require the alleged violator to appear before the board or department, by subpoena or subpoena duces tecum, for a hearing at a time and place specified in the notice to answer the charges complained of or to provide information regarding the alleged violation or its actual or potential impact on the public health and welfare or the environment;~~

(b) ~~initiate action under 75-11-513, 75-11-514, or 75-11-516; or~~

(c) ~~assess administrative penalties and issue corrective action orders under 75-11-525.~~

(4) ~~In the case of disobedience of any subpoena issued and served under this section or of the refusal of any witness to testify as to any material matter with regard to which the witness may be interrogated in a hearing or investigation before the board or the department, the board or department may apply to any district court in the state for an order to compel compliance with the subpoena or the giving of testimony. The court shall hear the matter as expeditiously as possible. If the disobedience or refusal is found to be unjustified, the court shall enter an order requiring compliance. Disobedience of the order is punishable by contempt of court in the same manner and by the same procedures as is provided for like conduct committed in the course of civil actions in district court.~~

(5) ~~If a person fails to comply with an order issued pursuant to subsection (1) or (3) within the time allowed in the order, the department may enter the property on which the underground storage tank that is in violation is located and temporarily close the tank. If the department finds that permanent closure is necessary to prevent substantial environmental harm or because the owner or operator is unlikely to comply with the order, it may permanently close the tank.~~

(6) ~~This section does not prevent the board or department from making efforts to obtain voluntary compliance through warning, conference, or any other appropriate means."~~

Section 132. Section 75-11-513, MCA, is amended to read:

"75-11-513. Injunctions. The department may institute and maintain, in the name of the state, actions for injunctive relief as provided in Title 27, chapter 19, to:

(1) ~~immediately restrain any person from engaging in any unauthorized activity that is endangering or causing damage to the public health or to the environment;~~

(2) ~~enjoin a violation of this part, a rule adopted under this part, or an order of the department or the board; or~~

(3) ~~require compliance with this part, a rule adopted under this part, or an order of the department or the board."~~

1 **Section 133.** Section 75-11-516, MCA, is amended to read:

2 ~~"75-11-516. **Civil penalties.** (1) (a) A person who violates any provision of this part, a rule adopted~~
3 ~~under this part, or an order of the department or the board is subject to a civil penalty not to exceed \$10,000 for~~
4 ~~each violation. Each day of violation constitutes a separate violation.~~

5 ~~(b) Penalties assessed under this subsection (1) must be determined in accordance with the penalty~~
6 ~~factors in 75-1-1001.~~

7 ~~(2) The department may institute and maintain in the name of the state any enforcement proceedings~~
8 ~~under this section. Upon request of the department, the attorney general or the county attorney of the county of~~
9 ~~violation shall petition the district court to impose, assess, and recover the civil penalty. Penalties are also~~
10 ~~recoverable in an action brought by the department. The action must be brought in the district court of the~~
11 ~~county in which the violation occurred or, if mutually agreed on by the parties in the action, in the district court of~~
12 ~~the first judicial district, Lewis and Clark County.~~

13 ~~(3) Action under this section does not bar enforcement of this part, rules adopted under this part, or~~
14 ~~orders of the department or the board.~~

15 ~~(4) Money collected under this section must be deposited in the state general fund."~~

16
17 **Section 134.** Section 75-11-525, MCA, is amended to read:

18 ~~"75-11-525. **Administrative penalties for violations -- appeals -- venue.** (1) (a) A person who~~
19 ~~violates any of the provisions of this part or any rules promulgated under the authority of this part may be~~
20 ~~assessed and ordered by the department to pay an administrative penalty not to exceed \$500 for each~~
21 ~~violation. This limitation on administrative penalties applies only to penalties assessed under this section. Each~~
22 ~~occurrence of the violation and each day that it remains uncorrected constitutes a separate violation. The~~
23 ~~department may suspend a portion of the administrative penalty assessed under this section if the condition~~
24 ~~that caused the assessment of the penalty is corrected within a specified time. Assessment of an administrative~~
25 ~~penalty under this section may be made in conjunction with any order or other administrative action authorized~~
26 ~~by this chapter.~~

27 ~~(b) Penalties assessed under this subsection (1) must be determined in accordance with the penalty~~
28 ~~factors in 75-1-1001.~~

1 ~~(2) When the department assesses an administrative penalty under this section, it must have written~~
2 ~~notice served personally or by certified mail on the alleged violator or the violator's agent. For purposes of this~~
3 ~~chapter, service by mail is complete on the day of receipt. The notice must state:~~

4 ~~(a) the provision alleged to be violated;~~

5 ~~(b) the facts alleged to constitute the violation;~~

6 ~~(c) the amount of the administrative penalty assessed under this section;~~

7 ~~(d) the amount, if any, of the penalty to be suspended upon correction of the condition that caused the~~
8 ~~assessment of the penalty;~~

9 ~~(e) the nature of any corrective action that the department requires, whether or not a portion of the~~
10 ~~penalty is to be suspended;~~

11 ~~(f) as applicable, the time within which the corrective action is to be taken and the time within which~~
12 ~~the administrative penalty is to be paid; and~~

13 ~~(g) the right to appeal or to a hearing to mitigate the penalty assessed.~~

14 ~~(3) A person assessed a penalty under this section may request a hearing before the board~~
15 ~~department to either contest the alleged violation or request mitigation of the penalty. The contested case~~
16 ~~provisions of the Montana Administrative Procedure Act, provided for in Title 2, chapter 4, part 6, apply to a~~
17 ~~hearing conducted under this section. If a hearing is held under this section, it must be held in Lewis and Clark~~
18 ~~County or the county in which the alleged violation occurred.~~

19 ~~(4) If the department is unable to collect an administrative penalty assessed under this section or if a~~
20 ~~person fails to pay all or any portion of an administrative penalty assessed under this section, the department~~
21 ~~may take action in district court to recover the penalty amount and any additional amounts assessed or sought~~
22 ~~under this chapter. The action must be brought in the district court of the county in which the violation occurred~~
23 ~~or, if mutually agreed on by the parties in the action, in the district court of the first judicial district, Lewis and~~
24 ~~Clark County.~~

25 ~~(5) Action under this section does not bar action under this chapter or any other remedy available to~~
26 ~~the department for violations of underground storage tank laws or rules promulgated under those laws.~~

27 ~~(6) Administrative penalties collected under this section must be deposited in the state general fund."~~

1 **Section 135.** Section 75-20-104, MCA, is amended to read:

2 ~~"75-20-104. Definitions.~~ In this chapter, unless the context requires otherwise, the following
3 definitions apply:

4 ~~(1) "Addition thereto" means the installation of new machinery and equipment that would significantly~~
5 ~~change the conditions under which the facility is operated.~~

6 ~~(2) "Application" means an application for a certificate submitted in accordance with this chapter and~~
7 ~~the rules adopted under this chapter.~~

8 ~~(3) (a) "Associated facilities" includes but is not limited to transportation links of any kind, aqueducts,~~
9 ~~diversion dams, pipelines, storage ponds, reservoirs, and any other device or equipment associated with the~~
10 ~~delivery of the energy form or product produced by a facility.~~

11 ~~(b) The term does not include a transmission substation, a switchyard, voltage support, or other~~
12 ~~control equipment or a facility or a natural gas or crude oil gathering line 25 inches or less in inside diameter.~~

13 ~~(4) "Board" means the board of environmental review provided for in 2-15-3502.~~

14 ~~(5)(4) "Certificate" means the certificate of compliance issued by the department under this chapter~~
15 ~~that is required for the construction or operation of a facility.~~

16 ~~(6)(5) "Commence to construct" means:~~

17 ~~(a) any clearing of land, excavation, construction, or other action that would affect the environment of~~
18 ~~the site or route of a facility but does not mean changes needed for temporary use of sites or routes for~~
19 ~~nonutility purposes or uses in securing geological data, including necessary borings to ascertain foundation~~
20 ~~conditions;~~

21 ~~(b) the fracturing of underground formations by any means if the activity is related to the possible~~
22 ~~future development of a gasification facility or a facility employing geothermal resources but does not include~~
23 ~~the gathering of geological data by boring of test holes or other underground exploration, investigation, or~~
24 ~~experimentation;~~

25 ~~(c) the commencement of eminent domain proceedings under Title 70, chapter 30, for land or rights-~~
26 ~~of-way upon or over which a facility may be constructed;~~

27 ~~(d) the relocation or upgrading of an existing facility defined by subsection (9)(a) or (9)(b)(8)(a) or~~
28 ~~(8)(b), including upgrading to a design capacity covered by subsection (9)(a), (8)(a), except that the term does~~

not include normal maintenance or repair of an existing facility.

~~(7)(6)~~ (a) "Commencement of acquisition of right of way" means the actual, defined legal transfer of property.

~~(b)~~ The term does not mean preliminary discussions, option agreements that are not within 60 days of commencement of acquisition, letters of intent, or other documents that do not conclusively result in the legal transfer of property.

~~(8)(7)~~ "Department" means the department of environmental quality provided for in 2-15-3501.

~~(9)(8)~~ "Facility" means, subject to 75-20-1202:

~~(a)~~ each electric transmission line and associated facilities of a design capacity of more than 69 kilovolts, except that the term:

~~(i)~~ does not include an electric transmission line and associated facilities of a design capacity of 230 kilovolts or less and 10 miles or less in length;

~~(ii)~~ does not include an electric transmission line with a design capacity of more than 69 kilovolts for which the person planning to construct the line has obtained right-of-way agreements or options for a right-of-way from more than 75% of the owners who collectively own more than 75% of the property along the centerline;

~~(iii)~~ does not include electric transmission lines that are collectively less than 150 miles in length and are required under state or federal regulations and laws, with respect to reliability of service, for an electrical generation facility, as defined in 15-24-3001(4), or a wind generation facility, biomass generation facility, or energy storage facility, as defined in 15-6-157, to interconnect to a regional transmission grid or secure firm transmission service to use the grid for which the person planning to construct the line or lines has obtained right-of-way agreements or options for a right-of-way from more than 75% of the owners who collectively own more than 75% of the property along the centerline or centerlines;

~~(iv)~~ does not include an upgrade to an existing transmission line of a design capacity of 50 kilovolts or more to increase that line's capacity, including construction outside the existing easement or right-of-way. Except for a newly acquired easement or right-of-way necessary to comply with electromagnetic field standards, a newly acquired easement or right-of-way outside the existing easement or right-of-way as described in this subsection ~~(9)(a)(iv)(8)(a)(iv)~~ may not exceed a total of 10 miles in length or be more than 10%

1 of the existing transmission right-of-way, whichever is greater, and the purpose of the easement must be to
2 avoid sensitive areas or inhabited areas or conform to state or federal safety, reliability, and operational
3 standards designed to safeguard the transmission network and protect electrical workers and the public.

4 (v) ~~does not include a transmission substation, a switchyard, voltage support, or other control~~
5 ~~equipment;~~

6 (vi) ~~does not include an energy storage facility, as defined in 15-6-157;~~

7 (b) (i) ~~each pipeline, whether partially or wholly within the state, greater than 25 inches in inside~~
8 ~~diameter and 50 miles in length, and associated facilities, except that the term does not include:~~

9 (A) ~~a pipeline within the boundaries of the state that is used exclusively for the irrigation of agricultural~~
10 ~~crops or for drinking water; or~~

11 (B) ~~a pipeline greater than 25 inches in inside diameter and 50 miles in length for which the person~~
12 ~~planning to construct the pipeline has obtained right-of-way agreements or options for a right-of-way from more~~
13 ~~than 75% of the owners who collectively own more than 75% of the property along the centerline;~~

14 (ii) ~~each pipeline, whether partially or wholly within the state, greater than 17 inches in inside diameter~~
15 ~~and 30 miles in length, and associated facilities used to transport coal suspended in water;~~

16 (c) ~~any use of geothermal resources, including the use of underground space in existence or to be~~
17 ~~created, for the creation, use, or conversion of energy, designed for or capable of producing geothermally~~
18 ~~derived power equivalent to 50 megawatts or more or any addition thereto, except pollution control facilities~~
19 ~~approved by the department and added to an existing plant, except that the term does not include a~~
20 ~~compressed air energy storage facility, as defined in 15-6-157; or~~

21 (d) ~~for the purposes of 75-20-204 only, a plant, unit, or other facility capable of generating 50~~
22 ~~megawatts of hydroelectric power or more or any addition thereto.~~

23 (10)(9) ~~"Person" means any individual, group, firm, partnership, corporation, limited liability company,~~
24 ~~cooperative, association, government subdivision, government agency, local government, or other organization~~
25 ~~or entity.~~

26 (11)(10) ~~"Sensitive areas" means government-designated areas that have been recognized for their~~
27 ~~importance to Montana's wildlife, wilderness, culture, and historic heritage, including but not limited to national~~
28 ~~wildlife refuges, state wildlife management areas, federal areas of critical environmental concern, state parks~~

1 and historic sites, designated wilderness areas, wilderness study areas, designated wild and scenic rivers, or
2 national parks, monuments, or historic sites.

3 ~~(12)(11)~~ "Transmission substation" means any structure, device, or equipment assemblage, commonly
4 located and designed for voltage regulation, circuit protection, or switching necessary for the construction or
5 operation of a proposed transmission line.

6 ~~(13)(12)~~ "Transmission reliability agencies" means the federal energy regulatory commission, the
7 western electricity coordinating council, the national electric reliability council, and the midwest reliability
8 organization.

9 ~~(14)(13)~~ "Upgrade" means to increase the electrical carrying capacity of a transmission line by actions
10 including but not limited to:

11 ~~(a)~~ installing larger conductors;

12 ~~(b)~~ replacing insulators;

13 ~~(c)~~ replacing pole or tower structures;

14 ~~(d)~~ changing structure spacing, design, or guying; or

15 ~~(e)~~ installing additional circuits.

16 ~~(15)(14)~~ "Utility" means any person engaged in any aspect of the production, storage, sale, delivery, or
17 furnishing of heat, electricity, gas, hydrocarbon products, or energy in any form for ultimate public use."

18
19 **Section 70.** Section 75-20-105, MCA, is amended to read:

20 **"75-20-105. Adoption of rules.** The ~~board~~ department may adopt rules implementing the provisions
21 of this chapter."

22
23 **Section 137.** Section 75-20-201, MCA, is amended to read:

24 ~~"75-20-201. Certificate required -- operation in conformance -- certificate for nuclear facility --~~
25 **applicability to federal facilities.** (1) Except for a facility under diligent onsite physical construction or in
26 operation on January 1, 1973, a person may not commence to construct a facility in the state without first
27 applying for and obtaining a certificate of compliance issued with respect to the facility by the department.

28 ~~(2) A facility with respect to which a certificate is issued may not be constructed, operated, or~~

maintained except in conformity with the certificate and any terms, conditions, and modifications contained within the certification.

~~(3) A certificate may only be issued pursuant to this chapter.~~

~~(4) If the department decides to issue a certificate for a nuclear facility, it shall report the recommendation to the applicant and may not issue the certificate until the recommendation is approved by a majority of the voters in a statewide election called by initiative or referendum according to the laws of this state.~~

~~(5) A person that proposes to construct an energy-related project that is not defined as a facility pursuant to 75-20-104(9) 75-20-104(8) may petition the department to review the energy-related project under the provisions of this chapter. The construction or installation of an energy storage facility, as defined in 15-6-157, is not considered an energy-related project under the provisions of this chapter. A certificate for the construction or installation of an energy storage facility is not required under this chapter.~~

~~(6) This chapter applies, to the fullest extent allowed by federal law, to all federal facilities and to all facilities over which an agency of the federal government has jurisdiction.~~

~~(7) All judicial challenges of certificates for projects with a project cost, as determined by the court, of more than \$1 million must have precedence over any civil cause of a different nature pending in that court. If the court determines that the challenge was without merit or was for an improper purpose, such as to harass, to cause unnecessary delay, or to impose needless or increased cost in litigation, the court may award attorney fees and costs incurred in defending the action."~~

Section 138. Section 75-20-207, MCA, is amended to read:

"75-20-207. Notice requirement for certain electric transmission lines. Whenever a person plans to construct an electric transmission line or associated facilities under the provisions of 75-20-104(9)(a)(ii) ~~75-20-104(8)(a)(ii)~~, it must provide public notice to persons residing in the area in which any portion of the electric transmission facility may be located and to the department. This notice must be made no less than 60 days prior to the commencement of acquisition of right-of-way as defined in 75-20-104 by publication of a summary describing the transmission facility and the proposed location of the facility in those newspapers that will substantially inform those persons of the construction and by mailing a summary to the department. The notice

1 must inform the property owners of their rights under this chapter concerning the location of the facility and that
2 more information concerning their rights may be obtained from the department."

3
4 **Section 139.** Section 75-20-208, MCA, is amended to read:

5 ~~"75-20-208. Certain electric transmission lines -- verification of requirements. (1) Prior to~~
6 ~~constructing a transmission line under 75-20-104(9)(a)(ii) 75-20-104(8)(a)(ii), the person planning to construct~~
7 ~~the line shall provide to the department within 36 months of the date of the public notice provided under 75-20-~~
8 ~~207, unless extended by the department for good cause:~~

9 ~~(a) copies of the right-of-way agreements or options for a right-of-way containing sufficient information~~
10 ~~to establish landowner consent to construct the line; and~~

11 ~~(b) sufficient information for the department to verify that the requirements of 75-20-104(9)(a)(ii) 75-~~
12 ~~20-104(8)(a)(ii) are satisfied.~~

13 ~~(2) The provisions of 75-20-104(9)(a)(ii) 75-20-104(8)(a)(ii) do not apply to any facility for which public~~
14 ~~notice under 75-20-207 has been given but for which the requirements of subsection (1) of this section have not~~
15 ~~been complied with."~~

16
17 **Section 140.** Section 75-20-211, MCA, is amended to read:

18 ~~"75-20-211. Application -- filing and contents -- proof of service and notice. (1) (a) An applicant~~
19 ~~shall file with the department an application for a certificate under this chapter and for the permits required~~
20 ~~under the laws administered by the department in the form that is required under applicable rules, containing~~
21 ~~the following information:~~

22 ~~(i) a description of the proposed location and of the facility to be built;~~

23 ~~(ii) a summary of any preexisting studies that have been made of the impact of the facility;~~

24 ~~(iii) for facilities defined in 75-20-104(9)(a) and (9)(b) 75-20-104(8)(a) and (8)(b), a statement~~
25 ~~explaining the need for the facility, a description of reasonable alternate locations for the facility, a general~~
26 ~~description of the comparative merits and detriments of each location submitted, and a statement of the~~
27 ~~reasons why the proposed location is best suited for the facility;~~

28 ~~(iv) (A) for facilities as defined in 75-20-104(9)(a) and (9)(b) 75-20-104(8)(a) and (8)(b), baseline data~~

for the primary and reasonable alternate locations; or

~~(B) for facilities as defined in 75-20-104(9)(c), 75-20-104(8)(c), baseline data for the proposed location and, at the applicant's option, any alternative locations acceptable to the applicant for siting the facility;~~

~~(v) at the applicant's option, an environmental study plan to satisfy the requirements of this chapter; and~~

~~(vi) other information that the applicant considers relevant or that the department by order or rule may require.~~

~~(b) If a copy or copies of the studies referred to in subsection (1)(a)(ii) are filed with the department, the copy or copies must be available for public inspection.~~

~~(2) An application may consist of an application for two or more facilities in combination that are physically and directly attached to each other and are operationally a single operating entity.~~

~~(3) The copy of the application must be accompanied by a notice specifying the date on or about which the application is to be filed.~~

~~(4) An application must also be accompanied by proof that public notice of the application was given to persons residing in the county in which any portion of the proposed facility is proposed or is alternatively proposed to be located, by publication of a summary of the application in those newspapers that will substantially inform those persons of the application."~~

Section 141. Section 75-20-215, MCA, is amended to read:

~~"75-20-215. Filing fee -- accountability -- refund -- use. (1) (a) A filing fee must be deposited in the state special revenue fund for the use of the department in administering Title 75, chapter 1, and this chapter. The applicant shall pay to the department a filing fee as provided in this section based upon the department's estimated costs of processing the application under this chapter. The fee may not exceed the following scale based upon the estimated cost of the facility:~~

~~(i) 6% of any estimated cost up to \$1 million; plus~~

~~(ii) 1% of any estimated cost over \$1 million and up to \$5 million; plus~~

~~(iii) 0.8% of any estimated cost over \$5 million and up to \$10 million; plus~~

~~(iv) 0.5% of any estimated cost over \$10 million and up to \$20 million; plus~~

1 ~~(v) 0.25% of any estimated cost over \$20 million and up to \$100 million; plus~~

2 ~~(vi) 0.125% of any estimated cost over \$100 million and up to \$500 million; plus~~

3 ~~(vii) 0.05% of any estimated cost over \$500 million and up to \$1 billion; plus~~

4 ~~(viii) 0.025% of any estimated cost over \$1 billion.~~

5 ~~(b) The department may allow in its discretion a credit against the fee payable under this section for~~
6 ~~the development of information or providing of services required under this chapter or required for preparation~~
7 ~~of an environmental impact statement or assessment under the Montana or national environmental policy acts.~~
8 ~~The applicant may submit the information to the department, together with an accounting of the expenses~~
9 ~~incurred in preparing the information. The department shall evaluate the applicability, validity, and usefulness of~~
10 ~~the data and determine the amount that may be credited against the filing fee payable under this section. Upon~~
11 ~~30 days' notice to the applicant, this credit may at any time be reduced if the department determines that it is~~
12 ~~necessary to carry out its responsibilities under this chapter.~~

13 ~~(2) (a) The department may contract with an applicant for the development of information, provision~~
14 ~~of services, and payment of fees required under this chapter. The contract may continue an agreement entered~~
15 ~~into pursuant to 75-20-106. Payments made to the department under a contract must be credited against the fee~~
16 ~~payable pursuant to this section. Notwithstanding the provisions of this section, the revenue derived from the~~
17 ~~filing fee must be sufficient to enable the department, the board, and the agencies listed in 75-20-216(6) to carry~~
18 ~~out their responsibilities under this chapter. The department may amend a contract to require additional~~
19 ~~payments for necessary expenses up to the limits set forth in subsection (1)(a) upon 30 days' notice to the~~
20 ~~applicant. The department and applicant may enter into a contract that exceeds the scale provided in~~
21 ~~subsection (1)(a).~~

22 ~~(b) If a contract is not entered into, the applicant shall pay the filing fee in installments in accordance~~
23 ~~with a schedule of installments developed by the department, provided that an installment may not exceed 20%~~
24 ~~of the total filing fee provided for in subsection (1).~~

25 ~~(3) The estimated cost of upgrading an existing transmission substation may not be included in the~~
26 ~~estimated cost of a proposed facility for the purpose of calculating a filing fee.~~

27 ~~(4) If an application consists of a combination of two or more facilities, the filing fee must be based on~~
28 ~~the total estimated cost of the combined facilities.~~

~~(5) The applicant is entitled to an accounting of money expended and to a refund with interest at the rate of 6% a year of that portion of the filing fee not expended by the department in carrying out its responsibilities under this chapter. A refund must be made after all administrative and judicial remedies have been exhausted by all parties to the certification proceedings.~~

~~(6) The revenue derived from filing fees must be used by the department in compiling the information required for rendering a decision on a certificate and for carrying out its and the board's other responsibilities under this chapter."~~

Section 71. Section 75-20-216, MCA, is amended to read:

"75-20-216. Study, evaluation, and report on proposed facility -- assistance by other agencies.

(1) After receipt of an application, the department shall within 30 days notify the applicant in writing that:

(a) the application is in compliance and is accepted as complete; or

(b) the application is not in compliance and shall list the deficiencies. Upon correction of these deficiencies and resubmission by the applicant, the department shall within 15 days notify the applicant in writing that the application is in compliance and is accepted as complete.

(2) Upon receipt of an application complying with 75-20-211 through 75-20-213, 75-20-215, and this section, the department shall:

(a) commence an evaluation of the proposed facility and its effects, considering all applicable criteria listed in 75-20-301, and shall issue a decision, opinion, order, certification, or permit as provided in subsection

(3);

(b) use, to the extent that it considers applicable, valid and useful existing studies and reports submitted by the applicant or compiled by a state or federal agency; and

(c) if a modification of a proposed facility is needed as determined by the department, consult with the applicant. The proposed modification must be analyzed in the environmental review document prepared under Title 75, chapter 1, parts 1 through 3.

(3) Except as provided in 75-1-205(4), 75-1-208(4)(b), and 75-20-231, the department shall issue, within 9 months following the date of acceptance of an application, any decision, opinion, order, certification, or permit required under the laws, other than those contained in this chapter, administered by the department. A

1 decision, opinion, order, certification, or permit, with or without conditions, must be made under those laws.
2 Nevertheless, the department retains authority to make the determination required under 75-20-301(1)(c) or (3).
3 The decision, opinion, order, certification, or permit must be used in the final site selection process. Prior to the
4 issuance of a preliminary decision by the department and pursuant to rules adopted by the ~~board~~ department,
5 the department shall provide an opportunity for public review and comment.

6 (4) Except as provided in 75-1-205(4), 75-1-208(4)(b), and 75-20-231, within 9 months following
7 acceptance of an application for a facility, the department shall issue a report that must contain the
8 department's studies, evaluations, recommendations, customer fiscal impact analysis, if required pursuant to
9 69-2-216, and other pertinent documents resulting from its study and evaluation. An environmental impact
10 statement or analysis prepared pursuant to the Montana Environmental Policy Act may be included in the
11 department findings if compelling evidence indicates that adverse environmental impacts are likely to result due
12 to the construction and operation of a proposed facility. If the application is for a combination of two or more
13 facilities, the department shall issue its report within the greater of the lengths of time provided for in this
14 subsection for either of the facilities.

15 (5) For projects subject to joint review by the department and a federal land management agency, the
16 department's certification decision may be timed to correspond to the record of decision issued by the
17 participating federal agency.

18 (6) The departments of transportation; fish, wildlife, and parks; natural resources and conservation;
19 revenue; and public service regulation and the consumer counsel shall report to the department information
20 relating to the impact of the proposed facility on each department's area of expertise. The department shall
21 allocate funds obtained from filing fees to the departments making reports and to the office of consumer
22 counsel to reimburse them for the costs of compiling information and issuing the required report."
23

24 **~~Section 143.~~** ~~Section 75-20-219, MCA, is amended to read:~~

25 ~~"75-20-219. Amendments to certificate. (1) (a) Within 30 days after notice of an amendment to a~~
26 ~~certificate is given as set forth in 75-20-213(1), including notice to all active parties to the original proceeding,~~
27 ~~the department shall determine whether the proposed change in the facility would result in a material increase~~
28 ~~in any environmental impact of the facility or a substantial change in the location of all or a portion of the facility~~

as set forth in the certificate.

(b) If the department determines that the proposed change would result in a material increase in any environmental impact of the facility or a substantial change in the location of all or a portion of the facility, the department shall grant, deny, or modify the amendment with conditions as it considers appropriate.

(c) If the department determines that a modification of the proposed amendment to the certificate is needed, it shall consult with the applicant.

(2) In those cases in which the department determines that the proposed change in the facility would not result in a material increase in any environmental impact or would not be a substantial change in the location of all or a portion of the facility, the department shall automatically grant the amendment either as applied for or upon terms or conditions that the department considers appropriate.

(3) If a hearing is requested under 75-20-223(2), the party requesting the hearing has the burden of showing by clear and convincing evidence that the department's determination is not reasonable.

(4) If an amendment is required to a certificate that would affect, amend, alter, or modify a decision, opinion, order, certification, or air or water quality permit issued by the department or board, the amendment must be processed under the applicable statutes administered by the department or board."

Section 144. Section 75-20-223, MCA, is amended to read:

"75-20-223. Board review REVIEW of department decisions. (1) (a) A person aggrieved by the final decision of the department on an application for a certificate or the issuance of an air or water quality decision, opinion, order, certification, or permit under this chapter may within 30 days appeal the decision to the board department. Except as provided in this section, the contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing before the board department.

(b) If the department provided an opportunity for public comment on the application, the request for a hearing must be limited to those issues the party has raised in comments made to the department during the comment period unless the issues are related to a material change in law made during the comment period, to a judicial decision issued after the comment period, or to a material change to the draft permit, which was submitted for public comment, made by the department in the final permit decision and upon which the public did not have a meaningful opportunity to comment. The request for hearing must be filed within 30 days after

1 the department renders its decision. An affidavit setting forth the grounds for the request must be filed with the
2 request for a hearing.

3 ~~(c) If a hearing is requested by a person other than the applicant or permittee, the applicant or~~
4 ~~permittee may, by filing a written election with the board department within 15 days of receipt of the request for~~
5 ~~hearing, elect to have the matter proceed to hearing before the board or to have the matter submitted directly to~~
6 ~~the district court for judicial review of the agency decision. The party who requests the hearing may elect to~~
7 ~~have the matter submitted either to the board department for a hearing or to the district court for judicial review~~
8 ~~by submitting a written election to the board department with the request for hearing. If there are conflicting~~
9 ~~elections between the parties, the matter must proceed to district court. If the applicant or permittee is not the~~
10 ~~person who requested the hearing and has elected to have the matter submitted to the district court, the person~~
11 ~~who submitted the request for a hearing shall file a petition for review of the permit decision within 15 days of~~
12 ~~receipt of notice from the permittee. If the person who requested the hearing has elected to have the matter~~
13 ~~proceed to district court, that person shall file a petition in district court within 15 days of filing the request. The~~
14 ~~petition must be limited to matters raised in the request for hearing and must be filed in the county in which the~~
15 ~~facility is located. If the applicant or permittee fails to make an election, the matter must proceed through the~~
16 ~~contested case process before the board department pursuant to the Montana Administrative Procedure Act.~~
17 ~~The board department or the district court shall apply the laws and rules in place when the department issued~~
18 ~~its decision, and the board department or the district court may not consider any issue from a party that was not~~
19 ~~presented to the department for the department's consideration during the formal comment period unless the~~
20 ~~issue is related to a material change in law made during the comment period, to a judicial decision issued after~~
21 ~~the comment period, or to a material change to the draft permit, which was submitted for public comment, made~~
22 ~~by the department in the final permit decision and upon which the public did not have a meaningful opportunity~~
23 ~~to comment.~~

24 ~~(2) A person aggrieved by the final decision of the department on an application for amendment of a~~
25 ~~certificate may within 15 days appeal the decision to the board department as provided in subsections (1)(b)~~
26 ~~and (1)(c).~~

27 ~~(3) A person aggrieved by the department's decision not to include an environmental impact~~
28 ~~statement or analysis in the department's findings pursuant to 75-20-216 may within 30 days appeal the~~

1 decision as provided in subsections (1)(b) and (1)(c).

2 (4) ~~The board department shall issue a final decision within 4 months from the close of the hearing~~
3 ~~on the merits or, if no hearing is held, within 3 months from the date that briefing by the parties is complete~~
4 ~~unless the applicant and the party other than the applicant agree in writing to an extension of time.~~

5 (5) ~~A customer fiscal impact analysis required by 69-2-216 may not be used as the basis of an~~
6 ~~appeal of a final decision by the department."~~

7

8 **Section 145.** Section 75-20-301, MCA, is amended to read:

9 ~~"75-20-301. Decision of department -- findings necessary for certification. (1) Within 30 days~~
10 ~~after issuance of the report pursuant to 75-20-216 for facilities defined in 75-20-104(9)(a) and (9)(b) 75-20-~~
11 ~~104(8)(a) and (8)(b), the department shall approve a facility as proposed or as modified or an alternative to a~~
12 ~~proposed facility if the department finds and determines:~~

13 (a) ~~the basis of the need for the facility;~~

14 (b) ~~the nature of the probable environmental impact;~~

15 (c) ~~that the facility minimizes adverse environmental impact, considering the state of available~~
16 ~~technology and the nature and economics of the various alternatives;~~

17 (d) ~~in the case of an electric, gas, or liquid transmission line or aqueduct:~~

18 (i) ~~what part, if any, of the line or aqueduct will be located underground;~~

19 (ii) ~~that the facility is consistent with regional plans for expansion of the appropriate grid of the utility~~
20 ~~systems serving the state and interconnected utility systems; and~~

21 (iii) ~~that the facility will serve the interests of utility system economy and reliability;~~

22 (e) ~~that the location of the facility as proposed conforms to applicable state and local laws and~~
23 ~~regulations, except that the department may refuse to apply any local law or regulation if it finds that, as applied~~
24 ~~to the proposed facility, the law or regulation is unreasonably restrictive in view of the existing technology, of~~
25 ~~factors of cost or economics, or of the needs of consumers, whether located inside or outside the directly~~
26 ~~affected government subdivisions;~~

27 (f) ~~that the facility will serve the public interest, convenience, and necessity;~~

28 (g) ~~that the department or board has issued any necessary air or water quality decision, opinion,~~

order, certification, or permit as required by 75-20-216(3); and

(h) ~~that the use of public lands or federally designated energy corridors for location of a facility defined in 75-20-104(9)(a) or (9)(b) 75-20-104(8)(a) and (8)(b) was evaluated and public lands or federally designated energy corridors for that facility were selected whenever their use was compatible with:~~

(i) ~~the requirements of subsections (1)(a) through (1)(g); and~~

(ii) ~~transmission line reliability criteria established by transmission reliability agencies for a facility defined in 75-20-104(9)(a). 75-20-104(8)(a).~~

(2) ~~In determining that the facility will serve the public interest, convenience, and necessity under subsection (1)(f), the department shall consider:~~

(a) ~~the items listed in subsections (1)(a) and (1)(b);~~

(b) ~~the benefits to the applicant and the state resulting from the proposed facility;~~

(c) ~~the effects of the economic activity resulting from the proposed facility;~~

(d) ~~the effects of the proposed facility on the public health, welfare, and safety;~~

(e) ~~any other factors that it considers relevant.~~

(3) ~~Within 30 days after issuance of the report pursuant to 75-20-216 for a facility defined in 75-20-104(9)(c) 75-20-104(8)(c), the department shall approve a facility as proposed or as modified or an alternative to a proposed facility if the department finds and determines:~~

(a) ~~that the facility or alternative incorporates all reasonable, cost-effective mitigation of significant environmental impacts; and~~

(b) ~~that unmitigated impacts, including those that cannot be reasonably quantified or valued in monetary terms, will not result in:~~

(i) ~~a violation of a law or standard that protects the environment; or~~

(ii) ~~a violation of a law or standard that protects the public health and safety.~~

(4) ~~For facilities defined in 75-20-104, if the department cannot make the findings required in this section, it shall deny the certificate."~~

Section 146. Section 75-20-303, MCA, is amended to read:

"75-20-303. Opinion issued with decision -- contents. (1) In rendering a decision on an application

1 ~~for a certificate, the department shall issue an opinion stating its reasons for the action taken.~~

2 ~~(2) If the department has found that any regional or local law or regulation that would be otherwise~~
3 ~~applicable is unreasonably restrictive, it shall state in its opinion the reasons that it is unreasonably restrictive.~~

4 ~~(3) A certificate issued by the department must include the following:~~

5 ~~(a) an environmental evaluation statement related to the facility being certified. The statement must~~
6 ~~include but is not limited to analysis of the following information:~~

7 ~~(i) the environmental impact of the proposed facility; and~~

8 ~~(ii) any adverse environmental effects that cannot be avoided by issuance of the certificate;~~

9 ~~(b) a plan for monitoring environmental effects of the proposed facility;~~

10 ~~(c) a plan for monitoring the certified facility site between the time of certification and completion of~~
11 ~~construction;~~

12 ~~(d) a time limit as provided in subsection (4);~~

13 ~~(e) a statement confirming that notice was provided pursuant to subsection (5); and~~

14 ~~(f) a statement signed by the applicant showing agreement to comply with the requirements of this~~
15 ~~chapter and the conditions of the certificate.~~

16 ~~(4) (a) The department shall issue as part of the certificate the following time limits:~~

17 ~~(i) For a facility as defined in 75-20-104(9)(a) 75-20-104(8)(a) that is more than 30 miles in length and~~
18 ~~for a facility defined in 75-20-104(9)(b), 75-20-104(8)(b), construction must be completed within 10 years.~~

19 ~~(ii) For a facility as defined in 75-20-104(9)(a) 75-20-104(8)(a) that is 30 miles or less in length,~~
20 ~~construction must be completed within 5 years.~~

21 ~~(iii) For a facility as defined in 75-20-104(9)(c), 75-20-104(8)(c), construction must begin within 6 years~~
22 ~~and continue with due diligence in accordance with preliminary construction plans established in the certificate.~~

23 ~~(b) Unless extended, a certificate lapses and is void if the facility is not constructed or if construction~~
24 ~~of the facility is not commenced within the time limits provided in this section.~~

25 ~~(c) The time limit may be extended for a reasonable period upon a showing by the applicant to the~~
26 ~~department that a good faith effort is being undertaken to complete construction under subsections (4)(a)(i) and~~
27 ~~(4)(a)(ii). Under this subsection, a good faith effort includes the process of acquiring any necessary state or~~
28 ~~federal permit or certificate for the facility and the process of judicial review of a permit or certificate.~~

1 ~~(d) Construction may begin immediately upon issuance of a certificate unless the department finds~~
2 ~~that there is substantial and convincing evidence that a delay in the commencement of construction is~~
3 ~~necessary and should be established for a particular facility.~~

4 ~~(5) (a) (i) Except as provided in subsection (5)(a)(ii), for a facility defined in 75-20-104(9)(a) and~~
5 ~~(9)(b) 75-20-104(8)(a) and (8)(b), the environmental review conducted pursuant to Title 75, chapter 1, parts 1~~
6 ~~through 3, prepared by the department must designate a 500-foot-wide facility siting corridor along the facility~~
7 ~~route.~~

8 ~~(ii) Prior to preparation of the environmental review or the draft environmental impact statement, the~~
9 ~~department shall consult the applicant and, in a manner determined by rule, landowners and identify areas in~~
10 ~~which a corridor considered in the environmental review document should be more or less than 500 feet wide.~~
11 ~~The corridor width may not be narrower than the applicant's right-of-way. For each area in which the corridor is~~
12 ~~more or less than 500 feet in width, the department shall provide a written justification. The department may not~~
13 ~~modify a corridor after issuance of the final environmental review document.~~

14 ~~(b) The department shall provide written notice of the availability of each environmental review~~
15 ~~document to each owner of property within a corridor. No more than 60 days prior to the availability of each~~
16 ~~environmental review document, the names and addresses of the property owners must be obtained from the~~
17 ~~property tax rolls of the county where the property is located. Except as provided in subsection (5)(c), the notice~~
18 ~~must:~~

19 ~~(i) be delivered personally or by first-class mail. If delivered personally, the property owner shall sign a~~
20 ~~receipt verifying that the property owner received the statement.~~

21 ~~(ii) inform the property owner that the property owner's property is located within a corridor;~~

22 ~~(iii) inform the property owner about how a copy of the environmental review document may be~~
23 ~~obtained; and~~

24 ~~(iv) inform the property owner of the property owner's rights under this chapter concerning the location~~
25 ~~of the facility and that more information concerning those rights may be obtained from the department.~~

26 ~~(c) If there is more than one name listed on the property tax rolls for a single property, the notice must~~
27 ~~be mailed to the first listed property owner at the address on the property tax rolls.~~

28 ~~(d) By mailing the notice as provided in subsection (5)(c), the notice requirements in subsection (5)(b)~~

1 ~~are satisfied.~~

2 ~~(6) (a) A certificate holder may submit an adjustment of the location of a facility outside the approved~~
3 ~~facility siting corridor to the department. The adjustment must be accompanied by the written agreement of the~~
4 ~~affected property owner and all contiguous property owners that would be affected. The submission must~~
5 ~~include a map showing the approved facility siting corridor and the proposed adjustment. At the time of~~
6 ~~submission to the department, the adjustment must be accompanied by a copy of a legal notice published in a~~
7 ~~newspaper of general circulation in the area of the adjustment. The legal notice must specify that public~~
8 ~~comments on the adjustment may be submitted to the department within 10 days of the publication date of the~~
9 ~~notice.~~

10 ~~(b) The certificate holder may construct the facility as described in the submission unless the~~
11 ~~department notifies the certificate holder within 15 days of the submission that the department has determined~~
12 ~~that:~~

13 ~~(i) the adjustment would change the basis of any finding required under 75-20-301 to the extent that~~
14 ~~the department would have selected a different siting corridor for the facility; or~~

15 ~~(ii) the adjustment would materially increase unmitigated adverse impacts.~~

16 ~~(c) An adjustment pursuant to subsection (6)(a) is not subject to:~~

17 ~~(i) Title 75, chapter 1, part 2;~~

18 ~~(ii) a certificate amendment under 75-20-219; or~~

19 ~~(iii) a board review under 75-20-223.~~

20 ~~(d) (i) For each facility, the department shall maintain a list of persons who requested to receive~~
21 ~~electronic notice of any adjustment submitted pursuant to this subsection (6).~~

22 ~~(ii) Upon receipt of a submitted adjustment, the department shall:~~

23 ~~(A) post information about the adjustment on the department's website; and~~

24 ~~(B) electronically notify each person identified in subsection (6)(d)(i) of the adjustment and where~~
25 ~~information about the adjustment may be viewed."~~

26
27 **Section 147.** Section 75-20-304, MCA, is amended to read:

28 **"75-20-304. Waiver of provisions of certification proceedings.** (1) The department may waive

1 compliance with any of the provisions of 75-20-216 and this part if the applicant makes a clear and convincing
2 showing to the department at a public hearing that an immediate, urgent need for a facility exists and that the
3 applicant did not have knowledge that the need for the facility existed sufficiently in advance to fully comply with
4 the provisions of 75-20-216 and this part.

5 ~~(2) The department may waive compliance with any of the provisions of this chapter upon receipt of~~
6 ~~notice by a person subject to this chapter that a facility or associated facility has been damaged or destroyed as~~
7 ~~a result of fire, flood, or other natural disaster or as the result of insurrection, war, or other civil disorder and~~
8 ~~there exists an immediate need for construction of a new facility or associated facility or the relocation of a~~
9 ~~previously existing facility or associated facility in order to promote the public welfare.~~

10 ~~(3) The department shall waive compliance with the requirements of 75-20-301(1)(c), (2)(b), and~~
11 ~~(2)(c) and the requirements of 75-20-211(1)(a)(iii) and (1)(a)(iv) and 75-20-216(3) relating to consideration of~~
12 ~~alternative sites if the applicant makes a clear and convincing showing to the department at a public hearing~~
13 ~~that:~~

14 ~~(a) a proposed facility will be constructed in a county where a single employer within the county has~~
15 ~~permanently curtailed or ceased operations, causing a loss of 250 or more permanent jobs within 2 years at the~~
16 ~~employer's operations within the preceding 10-year period;~~

17 ~~(b) the county and municipal governing bodies in whose jurisdiction the facility is proposed to be~~
18 ~~located support by resolution the waiver;~~

19 ~~(c) the proposed facility will be constructed within a 15-mile radius of the operations that have ceased~~
20 ~~or been curtailed; and~~

21 ~~(d) the proposed facility will have a beneficial effect on the economy of the county in which the facility~~
22 ~~is proposed to be located.~~

23 ~~(4) The waiver provided for in subsection (3) applies only to permanent job losses by a single~~
24 ~~employer. The waiver provided for in subsection (3) does not apply to jobs of a temporary or seasonal nature,~~
25 ~~including but not limited to construction jobs or job losses during labor disputes.~~

26 ~~(5) The waiver provided for in subsection (3) does not apply to consideration of alternatives or~~
27 ~~minimum adverse environmental impact for a facility defined in 75-20-104(9)(a) or (9)(b) 75-20-104(8)(a) or~~
28 ~~(8)(b) or for an associated facility defined in 75-20-104(3).~~

(6) ~~The applicant shall pay all expenses required to process and conduct a hearing on a waiver request under subsection (3). However, any payments made under this subsection must be credited toward the fee paid under 75-20-215 to the extent that the data or evidence presented at the hearing or the decision of the department under subsection (3) can be used in making a certification decision under this chapter.~~

(7) ~~The department may grant only one waiver under subsections (3) and (4) for each permanent loss of jobs as defined in subsection (3)(a)."~~

Section 148. Section 75-20-401, MCA, is amended to read:

~~"75-20-401. Additional requirements by other governmental agencies not permitted after issuance of certificate -- exceptions -- venue for challenging certificate issuance. (1) Notwithstanding any other law, a state or regional agency or municipality or other local government may not require any approval, consent, permit, certificate, or other condition for the construction, operation, or maintenance of a facility authorized by a certificate issued pursuant to this chapter, except that the department and board retain retains the authority that they have or may be granted to determine compliance of the proposed facility with state and federal standards and implementation plans for air and water quality and to enforce those standards.~~

~~(2) This chapter does not prevent the application of state laws for the protection of employees engaged in the construction, operation, or maintenance of a facility.~~

~~(3) A judicial challenge to a certificate issued pursuant to this chapter by a party other than the certificate holder or applicant must include the party to whom the certificate was issued as provided in this chapter unless otherwise agreed to by the certificate holder or applicant. All judicial challenges of certificates for projects with a project cost, as determined by the court, of more than \$1 million must have precedence over any civil cause of a different nature pending in that court. If the court determines that the challenge was without merit or was for an improper purpose, such as to harass, to cause unnecessary delay, or to impose needless or increased cost in litigation, the court may award attorney fees and costs incurred in defending the action.~~

~~(4) An action to challenge the issuance of a certificate pursuant to this chapter must be brought in the county in which the activity authorized by the certificate will occur. If an activity will occur in more than one county, the action may be brought in any of the counties in which the activity will occur."~~

Section 72. Section 75-20-406, MCA, is amended to read:

"75-20-406. Judicial review of ~~board-department~~ decisions. (1) A person aggrieved by the final decision of the ~~board-department~~ OR BOARD on an application for a certificate may obtain judicial review of that decision by the filing of a petition in a state district court of competent jurisdiction. A challenge to the issuance of a certificate must be brought in the county in which the activity authorized by the certificate will occur. If an activity will occur in more than one county, the action may be brought in any of the counties in which the activity will occur.

(2) The judicial review procedure is the procedure for contested cases under the Montana Administrative Procedure Act.

(3) A judicial challenge to a certificate issued pursuant to this chapter by a party other than the certificate holder or applicant must include the party to whom the certificate was issued as provided in this chapter unless otherwise agreed to by the certificate holder or applicant. All judicial challenges of certificates for projects with a project cost, as determined by the court, of more than \$1 million must have precedence over any civil cause of a different nature pending in that court. If the court determines that the challenge was without merit or was for an improper purpose, such as to harass, to cause unnecessary delay, or to impose needless or increased cost in litigation, the court may award attorney fees and costs incurred in defending the action."

Section 73. Section 75-20-407, MCA, is amended to read:

"75-20-407. Jurisdiction of courts restricted. Except as expressly set forth in 75-20-401, 75-20-406, and 75-20-408, no court of this state has jurisdiction to hear or determine any issue, case, or controversy concerning any matter which was or could have been determined in a proceeding before the ~~board~~ BOARD OR department under this chapter or to stop or delay the construction, operation, or maintenance of a facility, except to enforce compliance with this chapter or the provisions of a certificate issued ~~hereunder~~ pursuant to 75-20-404 and 75-20-405 or 75-20-408."

~~**Section 151.** Section 75-20-410, MCA, is amended to read:~~

~~**"75-20-410. Order not stayed by appeal -- stay or suspension by court -- limitations.**~~
~~Notwithstanding any contrary provision in the law, the pendency of an appeal from a board department order~~

1 does not automatically stay or suspend the operation of the order. During the pendency of the appeal, the court
2 may upon motion by one of the parties stay or suspend, in whole or in part, the operation of the board's
3 department's orders on terms the court considers just. The court's action must be in accordance with the
4 practice of courts exercising equity jurisdiction, subject to the following limitations:

5 (1) ~~No stay may be granted without notice to the parties and an opportunity to be heard by the court.~~

6 (2) ~~No board department order may be stayed or suspended without finding that irreparable damage~~
7 ~~would otherwise result to the party seeking the stay or suspension, and any other stay or suspension of a board~~
8 ~~department order must specify the nature of the damage."~~

9
10 **Section 152.** Section 75-20-411, MCA, is amended to read:

11 ~~"75-20-411. **Surety bond -- other security.** If an order of the board department is stayed or~~
12 ~~suspended, the court may require a bond with good and sufficient surety conditioned that the party petitioning~~
13 ~~for review answer for all damages caused by the delay in enforcing the order of the board except that the cost~~
14 ~~of the bond is not chargeable to the applicant as part of the fee. If the party petitioning for review prevails upon~~
15 ~~final resolution of an appeal, the party does not forfeit bond nor is the party responsible for damages caused by~~
16 ~~delay."~~

17
18 **Section 74.** Section 75-20-1001, MCA, is amended to read:

19 **"75-20-1001. Geothermal exploration -- notification of department.** The ~~board~~ department shall
20 adopt rules requiring every person who proposes to gather geological data by boring of test holes or other
21 underground exploration, investigation, or experimentation related to the possible future development of a
22 facility employing geothermal resources to comply with the following requirements:

23 (1) notify the department of the proposed action;

24 (2) submit to the department a description of the area involved;

25 (3) submit to the department a statement of the proposed activities to be conducted and the methods
26 to be utilized;

27 (4) submit to the department geological data reports at such times as may be required by the rules;

28 and

(5) submit such other information as the ~~board~~department may require in the rules."

Section 154. Section 75-20-1202, MCA, is amended to read:

"75-20-1202. Definitions. As used in 75-20-201, 75-20-203, and this part, the following definitions apply:

(1) "Facility", as defined in 75-20-104(9) ~~75-20-104(8)~~, is further defined to include any nuclear facility as defined in subsection (2)(a).

(2) (a) "Nuclear facility" means each plant, unit, or other facility designed for or capable of:

(i) generating 50 megawatts of electricity or more by means of nuclear fission;

(ii) converting, enriching, fabricating, or reprocessing uranium minerals or nuclear fuels; or

(iii) storing or disposing of radioactive wastes or materials from a nuclear facility.

(b) Nuclear facility does not include any small-scale facility used solely for educational, research, or medical purposes not connected with the commercial generation of energy."

Section 75. Section 75-20-1203, MCA, is amended to read:

"75-20-1203. Additional requirements for issuance of a certificate for the siting of a nuclear facility. (1) The ~~board~~department may not issue a certificate to construct a nuclear facility unless it finds that:

(a) no legal limits exist regarding the rights of a person or group of persons to bring suit for and recover full and just compensation from the designers, manufacturers, distributors, owners, ~~and/or~~or operators of a nuclear facility for damages resulting from the existence or operation of the facility; and further, that no legal limits exist regarding the total compensation ~~which~~that may be required from the designers, manufacturers, distributors, owners, ~~and/or~~or operators of a nuclear facility for damages resulting from the existence or operation of ~~such~~the facility;

(b) the effectiveness of all safety systems, including but not limited to the emergency core cooling systems, of ~~such~~the nuclear facility has been demonstrated, to the satisfaction of the ~~board~~department, by the comprehensive laboratory testing of substantially similar physical systems in actual operation;

(c) the radioactive materials from ~~such~~the nuclear facilities can be contained with no reasonable chance, as determined by the ~~board~~department, of intentional or unintentional escape or diversion of ~~such~~

1 ~~radioactive~~ materials into the natural environment in ~~such a manner as to cause that causes~~ substantial or long-
2 term harm or hazard to present or future generations due to imperfect storage technologies, earthquakes or
3 other acts of God, theft, sabotage, acts of war or other social instabilities, or whatever other causes the ~~board~~
4 ~~department~~ may ~~deem to be consider~~ reasonably possible, at any time during which ~~such the~~ materials remain
5 a radiological hazard; and

6 (d) the owner of ~~such the~~ nuclear facility has posted with the ~~board department~~ a bond totaling not
7 less than 30% of the total capital cost of the facility, as estimated by the ~~board department~~, to pay for the
8 decommissioning of the facility and the decontamination of any area contaminated with radioactive materials
9 due to the existence or operation of the facility in the event the owner fails to pay the full costs of ~~such the~~
10 decommissioning and decontamination. Excess bond, if any, ~~shall must~~ be refunded to the owner upon
11 demonstration, to the satisfaction of the ~~board department~~, that the site and environs of the facility pose no
12 radiological danger to present or future generations and that whatever other conditions the ~~board department~~
13 may ~~deem consider~~ reasonable ~~have been are~~ met.

14 (2) Nothing in this section ~~shall may~~ be construed as relieving the owner of a nuclear facility from full
15 financial responsibility for the decommissioning of ~~such the~~ facility and decontamination of any area
16 contaminated with radioactive materials as a result of the existence or operation of ~~such the~~ facility at any time
17 during which such materials remain a radiological hazard."
18

19 **Section 76.** Section 75-20-1205, MCA, is amended to read:

20 **"75-20-1205. Emergency approval authority invalid for nuclear facilities.** Notwithstanding the
21 provisions of 75-20-304(2) and (3), the ~~board department~~ may not waive compliance with any of the provisions
22 of 75-20-201 and 75-20-203 or this part relating to certification of a nuclear facility."
23

24 **Section 157.** ~~Section 75-26-301, MCA, is amended to read:~~

25 ~~"75-26-301. Definitions.~~ As used in this part, unless the context requires otherwise, the following
26 definitions apply:

27 (1) ~~"Board"~~ means the board of environmental review provided for in 2-15-3502.

28 (2)(1) ~~"Decommission" or "decommissioning"~~ means:

(a) ~~except as provided in 75-26-304(2), the removal of buildings, cabling, electrical components, roads, or any other facilities associated with a wind generation or solar facility;~~

(b) ~~except as provided in 75-26-304(2), reclamation of surface lands to the previous grade and to comparable productivity in order to prevent adverse hydrologic effects; and~~

(c) ~~(i) the removal of the solar facility after the end of the facility's useful life or abandonment; or
(ii) the removal of an aboveground wind turbine tower after the end of a wind generation facility's useful life or abandonment.~~

~~(3)(2) "Department" means the department of environmental quality provided for in 2-15-3501.~~

~~(4)(3) "Owner" means a person who owns a wind generation or solar facility used for the generation of electricity.~~

~~(5)(4) "Person" means any individual, firm, partnership, company, association, corporation, city, town, or local governmental entity or any other state, federal, or private entity, whether organized for profit or not.~~

~~(6)(5) "Repurposed" means having made a significant investment in an existing wind generation or solar facility to extend the useful life of the facility by more than 5 years.~~

~~(7)(6) "Solar facility" means an installation or combination of solar panels or plates, including a canopy or array, that captures and converts solar radiation to produce electricity and includes flat plate, focusing solar collectors, or photovoltaic solar cells that:~~

~~(a) has a nameplate capacity greater than or equal to 2 megawatts; and~~

~~(b) produces electricity that is not consumed on the premises of the solar facility or on land immediately adjacent to the premises of the solar facility.~~

~~(8)(7) "Wind generation facility" means any combination of a physically connected wind turbine or turbines, associated prime movers, and other associated property, including appurtenant land and improvements and personal property, that are normally operated together to produce electric power from wind and that have a nameplate capacity greater than or equal to 25 megawatts."~~

Section 158. Section 75-26-304, MCA, is amended to read:

"75-26-304. Bond -- penalty for failure to submit. (1) (a) Within 12 months of a wind generation facility or solar facility commencing commercial operation, the owner of a wind generation facility or solar facility

1 operating in Montana shall:

2 (i) ~~notify the department in writing of the date that the facility began commercial operation;~~

3 (ii) ~~subject to subsection (2), submit a plan for decommissioning the facility to the department,~~

4 ~~including the scope of work to be completed and cost estimates for completion; and~~

5 (iii) ~~provide the department with any other necessary information in accordance with this part and rules~~
6 ~~adopted pursuant to this part in order for the department to determine bond requirements in accordance with~~
7 ~~this section.~~

8 (b) ~~Except as provided in subsection (1)(c), if a wind generation facility or solar facility commenced~~
9 ~~commercial operation before May 7, 2019, the owner of the facility shall submit to the department the~~
10 ~~information required in subsection (1)(a) on or before July 1, 2020.~~

11 (c) ~~If a wind generation facility commenced commercial operation before May 7, 2019, and the owner~~
12 ~~of the facility submitted information required by subsection (1)(a) on or before July 1, 2018, the owner is not~~
13 ~~required to resubmit the information.~~

14 (2) ~~If a property owner and the owner of a wind generation facility or solar facility reach an agreement~~
15 ~~concerning alternative restoration of buildings, cabling, electrical components, roads, or any other associated~~
16 ~~facilities, instead of removal, or alternative plans for reclamation of surface lands, or both, decommissioning~~
17 ~~does not include removal, plans for reclamation, or both, as long as a copy of the agreement is provided to the~~
18 ~~department.~~

19 (3) (a) ~~If necessary, the department may modify a plan for decommissioning to determine bond~~
20 ~~requirements in accordance with subsections (4) through (8).~~

21 (b) ~~The department shall notify the owner of the facility of any modification. The owner of the wind~~
22 ~~generation facility or solar facility may appeal a modification by the department of a plan for decommissioning to~~
23 ~~the board department within 60 days of receiving notice of the modification to the plan.~~

24 (4) ~~In determining the amount of a bond required in accordance with subsection (6), the department~~
25 ~~shall consider:~~

26 (a) ~~the character and nature of the site where the wind generation facility or solar facility is located;~~

27 and

28 (b) ~~the current market salvage value of the wind generation facility or solar facility, as determined by~~

1 an independent evaluator.

2 ~~(5) Except as provided in subsections (7) and (8) and in accordance with subsection (6), the owner of~~
3 ~~a wind generation facility or solar facility shall submit to the department a bond payable to the state of Montana~~
4 ~~in a form acceptable by the department and in the sum determined by the department, conditioned on the~~
5 ~~faithful decommissioning of the wind generation facility or solar facility.~~

6 ~~(6) (a) Except as provided in subsections (7) and (8), if a wind generation facility or solar facility~~
7 ~~commenced commercial operation on or before January 1, 2007, the operator shall submit the~~
8 ~~decommissioning bond to the department prior to the conclusion of the 16th year of operation of the wind~~
9 ~~generation facility or solar facility.~~

10 ~~(b) Except as provided in subsections (7) and (8), if a wind generation facility or solar facility~~
11 ~~commenced commercial operation after January 1, 2007, the operator shall submit the decommissioning bond~~
12 ~~to the department prior to the conclusion of the 15th year of operation of the wind generation facility or solar~~
13 ~~facility.~~

14 ~~(7) If a wind generation facility or solar facility is repurposed, as determined by the department in~~
15 ~~consultation with the owner, the owner is not required to provide a bond, and any existing bond must be~~
16 ~~released until the repurposed facility reaches its 5th year of operation.~~

17 ~~(8) An owner of a wind generation facility or solar facility is exempt from the requirements of~~
18 ~~subsection (6) if:~~

19 ~~(a) the owner posts a bond with a federal agency, with the department of natural resources and~~
20 ~~conservation for the lease of state land, or with a tribal, county, or local government;~~

21 ~~(b) the owner furnishes documents to the department that prove the owner is responsible under the~~
22 ~~terms and conditions of a lease agreement to provide private bonding. The parties shall agree that release of~~
23 ~~the agreed upon bond is subject to the approval of the department upon completion of reclamation.~~

24 ~~(c) the private landowner on whose land the wind generation facility or solar facility is located owns a~~
25 ~~10% or greater share of the wind generation facility or solar facility, as determined by the department; or~~

26 ~~(d) the facility:~~

27 ~~(i) commenced commercial operation on or before January 1, 2018, is a wind generation facility, and~~
28 ~~has less than 25 megawatts in nameplate capacity; or~~

~~(ii) commenced commercial operation on or before January 1, 2020, is a solar facility, and has less than 2 megawatts in nameplate capacity.~~

~~(9) (a) If the owner of the wind generation facility or solar facility fails to submit a decommissioning bond acceptable to the department within the timeframe required by this section, the department shall provide notice to the facility owner. If after 30 days the owner of a wind generation facility or solar facility has not submitted a decommissioning bond, the department may assess an administrative penalty of not more than \$1,500 and an additional administrative penalty of not more than \$1,500 for each day the failure to submit the decommissioning bond continues.~~

~~(b) The owner of the wind generation facility or solar facility may appeal the department's penalty assessment to the board within 20 days after receipt of written notice of the penalty. The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing before the board department under this subsection (9).~~

~~(10) If the owner of a wind generation facility or solar facility transfers ownership of the facility to a successor owner, the first owner's bond must be released after 90 days. The new owner shall submit any necessary bond within 90 days after transfer of ownership or be subject to penalties in accordance with this section.~~

~~(11) Once every 5 years, the owner of a wind generation facility or solar facility may submit an amended plan for the department's approval. As part of the submission, the owner of a wind generation facility or solar facility may also apply to the department for a reduction in the amount of the decommissioning bond applicable to the wind energy facility or solar facility. The owner's application to the department must include a detailed description of any material changes to information considered by the department in setting the initial amount of the bond.~~

~~(12) Submitting a bond in accordance with this section does not absolve the owner of a wind generation facility or solar facility from complying with applicable regulations and requirements for:~~

~~(a) areas subject to local zoning adopted under Title 76, chapter 2;~~

~~(b) military affected areas under Title 10, chapter 1, part 15; or~~

~~(c) airport affected areas under Title 67, chapter 7."~~

1 **Section 77.** Section 76-3-622, MCA, is amended to read:

2 **"76-3-622. Water and sanitation information to accompany preliminary plat.** (1) Except as
3 provided in subsection (2), the subdivider shall submit to the governing body or to the agent or agency
4 designated by the governing body the information listed in this section for proposed subdivisions that will
5 include new water supply or wastewater facilities. The information must include:

6 (a) a vicinity map or plan that shows:

7 (i) the location, within 100 feet outside of the exterior property line of the subdivision and on the
8 proposed lots, of:

9 (A) flood plains;

10 (B) surface water features;

11 (C) springs;

12 (D) irrigation ditches;

13 (E) existing, previously approved, and, for parcels less than 20 acres, proposed water wells and
14 wastewater treatment systems;

15 (F) for parcels less than 20 acres, mixing zones identified as provided in subsection (1)(g); and

16 (G) the representative drainfield site used for the soil profile description as required under subsection
17 (1)(d); and

18 (ii) the location, within 500 feet outside of the exterior property line of the subdivision, of public water
19 and sewer facilities;

20 (b) a description of the proposed subdivision's water supply systems, storm water systems, solid
21 waste disposal systems, and wastewater treatment systems, including:

22 (i) whether the water supply and wastewater treatment systems are individual, shared, multiple user,
23 or public as those systems are defined in rules published by the department of environmental quality; and

24 (ii) if the water supply and wastewater treatment systems are shared, multiple user, or public, a
25 statement of whether the systems will be public utilities as defined in 69-3-101 and subject to the jurisdiction of
26 the public service commission or exempt from public service commission jurisdiction and, if exempt, an
27 explanation for the exemption;

28 (c) a drawing of the conceptual lot layout at a scale no smaller than 1 inch equal to 200 feet that

shows all information required for a lot layout document in rules adopted by the department of environmental quality pursuant to 76-4-104;

(d) evidence of suitability for new onsite wastewater treatment systems that, at a minimum, includes:

(i) a soil profile description from a representative drainfield site identified on the vicinity map, as provided in subsection (1)(a)(i)(G), that complies with standards published by the department of environmental quality;

(ii) demonstration that the soil profile contains a minimum of 4 feet of vertical separation distance between the bottom of the permeable surface of the proposed wastewater treatment system and a limiting layer; and

(iii) in cases in which the soil profile or other information indicates that ground water is within 7 feet of the natural ground surface, evidence that the ground water will not exceed the minimum vertical separation distance provided in subsection (1)(d)(ii);

(e) for new water supply systems, unless cisterns are proposed, evidence of adequate water availability:

(i) obtained from well logs or testing of onsite or nearby wells;

(ii) obtained from information contained in published hydrogeological reports; or

(iii) as otherwise specified by rules adopted by the department of environmental quality pursuant to 76-4-104;

(f) evidence of sufficient water quality in accordance with rules adopted by the department of environmental quality pursuant to 76-4-104;

(g) a preliminary analysis of potential impacts to ground water quality from new wastewater treatment systems, using as guidance rules adopted by the board of environmental review pursuant to 75-5-301 and 75-5-303 related to standard mixing zones for ground water, source specific mixing zones, and nonsignificant changes in water quality. The preliminary analysis may be based on currently available information and must consider the effects of overlapping mixing zones from proposed and existing wastewater treatment systems within and directly adjacent to the subdivision. Instead of performing the preliminary analysis required under this subsection (1)(g), the subdivider may perform a complete nondegradation analysis in the same manner as is required for an application that is reviewed under Title 76, chapter 4.

(2) A subdivider whose land division is excluded from review under 76-4-125(1) is not required to submit the information required in this section.

(3) A governing body may not, through adoption of regulations, require water and sanitation information in addition to the information required under this section unless the governing body complies with the procedures provided in 76-3-511."

Section 160. Section 76-4-102, MCA, is amended to read:

"76-4-102. Definitions. As used in this part, unless the context clearly indicates otherwise, the following definitions apply:

(1) ~~"Adequate county water and/or sewer district facilities" means facilities provided by a county water and/or sewer district incorporated under Title 7, chapter 13, that operate in compliance with Title 75, chapters 5 and 6.~~

(2) ~~"Adequate municipal facilities" means municipally, publicly, or privately owned facilities that supply water, treat sewage, or dispose of solid waste for all or most properties within the boundaries of a municipality and that are operating in compliance with Title 75, chapters 5 and 6.~~

(3) ~~"Board" means the board of environmental review.~~

(4)(3) ~~"Certifying authority" means a municipality or a county water and/or sewer district that meets the eligibility requirements established by the department under 76-4-104(6).~~

(5)(4) ~~"Department" means the department of environmental quality.~~

(6)(5) ~~"Extension of a public sewage system" means a sewerline that connects two or more sewer service lines to a sewer main.~~

(7)(6) ~~"Extension of a public water supply system" means a waterline that connects two or more water service lines to a water main.~~

(8)(7) ~~"Facilities" means public or private facilities for the supply of water or disposal of sewage or solid waste and any pipes, conduits, or other stationary method by which water, sewage, or solid wastes might be transported or distributed.~~

(9)(8) ~~"Individual water system" means any water system that serves one living unit or commercial unit and that is not a public water supply system as defined in 75-6-102.~~

~~(10)(9) "Mixing zone" has the meaning provided in 75-5-103.~~

~~(11)(10) (a) "Proposed drainfield mixing zone" means a mixing zone submitted for approval under this chapter after March 30, 2011.~~

~~(b) The term does not include drainfield mixing zones that existed or were approved under this chapter prior to March 30, 2011.~~

~~(12)(11) (a) "Proposed well isolation zone" means a well isolation zone submitted for approval under this chapter after October 1, 2013.~~

~~(b) The term does not include well isolation zones that existed or were approved under this chapter prior to October 1, 2013.~~

~~(13)(12) "Public sewage system" or "public sewage disposal system" means a public sewage system as defined in 75-6-102.~~

~~(14)(13) "Public water supply system" has the meaning provided in 75-6-102.~~

~~(15)(14) "Registered professional engineer" means a person licensed to practice as a professional engineer under Title 37, chapter 67.~~

~~(16)(15) "Registered sanitarian" means a person licensed to practice as a sanitarian under Title 37, chapter 40.~~

~~(17)(16) "Reviewing authority" means the department or a local department or board of health certified to conduct a review under 76-4-104.~~

~~(18)(17) "Sanitary restriction" means a prohibition against the erection of any dwelling, shelter, or building requiring facilities for the supply of water or the disposition of sewage or solid waste or the construction of water supply or sewage or solid waste disposal facilities until the department has approved plans for those facilities.~~

~~(19)(18) "Sewage" has the meaning provided in 75-5-103.~~

~~(20)(19) "Sewer service line" means a sewerline that connects a single building or living unit to a public sewage system or to an extension of a public sewage system.~~

~~(21)(20) "Solid waste" has the meaning provided in 75-10-103.~~

~~(22)(21) "Subdivision" means a division of land or land so divided that creates one or more parcels containing less than 20 acres, exclusive of public roadways, in order that the title to or possession of the~~

1 parcels may be sold, rented, leased, or otherwise conveyed and includes any resubdivision, any condominium,
2 townhome, or townhouse, or any area, regardless of size, that provides permanent multiple space for
3 recreational camping vehicles or mobile homes.

4 ~~(23)(22)~~ "Water service line" means a waterline that connects a single building or living unit to a public
5 water supply system or to an extension of a public water supply system.

6 ~~(24)(23)~~ "Well isolation zone" means the area within a 100-foot radius of a water well."
7

8 **Section 161.** Section 76-4-108, MCA, is amended to read:

9 ~~"76-4-108. Enforcement. (1) If the reviewing authority has reason to believe that a violation of this~~
10 ~~part or a rule adopted or an order issued under this part has occurred, the reviewing authority may have written~~
11 ~~notice and an order served personally or by certified mail on the alleged violator or the alleged violator's agent.~~
12 ~~The notice must state the provision alleged to be violated, the facts alleged to constitute the violation, the~~
13 ~~corrective action required by the reviewing authority, and the time within which the action is to be taken. A~~
14 ~~notice and order issued by the department under this section may also assess an administrative penalty as~~
15 ~~provided in 76-4-109. The alleged violator may, no later than 30 days after service of a notice and order under~~
16 ~~this section, request a hearing before the local reviewing authority if it issued the notice of violation or the board~~
17 ~~department if the department issued the notice of violation. A request for a hearing must be filed in writing with~~
18 ~~the appropriate entity and must state the reason for the request. If a request is filed, a hearing must be held~~
19 ~~within a reasonable time.~~

20 ~~(2) In addition to or instead of issuing an order, the reviewing authority may initiate any other~~
21 ~~appropriate action to compel compliance with this part.~~

22 ~~(3) The provisions of this part may be enforced by a reviewing authority other than the department or~~
23 ~~board only for those divisions described in 76-4-104(3). If a local reviewing authority fails to adequately enforce~~
24 ~~the provisions of this part, the department or the board may compel compliance with this part under the~~
25 ~~provisions of this section.~~

26 ~~(4) When a local reviewing authority exercises the authority delegated to it by this section, the local~~
27 ~~reviewing authority is legally responsible for its actions under this part.~~

28 ~~(5) If the department or a local reviewing authority determines that a violation of this part, a rule~~

1 adopted under this part, or an order issued under this part has occurred, the department or the local reviewing
2 authority may revoke its certificate of approval for the subdivision and reimpose sanitary restrictions following
3 written notice to the alleged violator. Upon revocation of a certificate, the person aggrieved by revocation may
4 request a hearing. A hearing request must be filed in writing within 30 days after receipt of the notice of
5 revocation and must state the reason for the request. The hearing is before the board department if the
6 department revoked the certificate or before the local reviewing authority if the local reviewing authority revoked
7 the certificate.

8 (6) ~~The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4,~~
9 ~~part 6, apply to a hearing held under this section."~~

10
11 **Section 162.** Section 76-4-126, MCA, is amended to read:

12 ~~"76-4-126. Right to hearing. (1) Upon a denial of approval of subdivision plans and specifications~~
13 ~~relating to environmental health facilities, the person who is aggrieved by the denial may request a hearing~~
14 ~~before the board department. A hearing request must be filed, in writing, within 30 days after receipt of the~~
15 ~~notice of denial and must state the reason for the request. The contested case provisions of the Montana~~
16 ~~Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing held under this section.~~

17 ~~(2) If the grounds for a denial of approval under this part include noncompliance with local laws or~~
18 ~~regulations other than those adopting, pursuant to 50-2-116, state minimum standards for the control and~~
19 ~~disposal of sewage, the board department shall upon receipt of a hearing request refer the local compliance~~
20 ~~issues to the appropriate local authority. After opportunity for a hearing, the local authority shall issue a~~
21 ~~determination regarding the local compliance issues, and the board department shall incorporate the~~
22 ~~determination of the local authority in the board's final decision."~~

23
24 **Section 78.** Section 76-4-1001, MCA, is amended to read:

25 **"76-4-1001. Penalty factors.** (1) In determining the amount of an administrative or civil penalty to
26 which subsection (4) applies, the department of environmental quality or the district court, as appropriate, shall
27 take into account the following factors:

28 (a) the nature, extent, and gravity of the violation;

- 1 (b) the circumstances of the violation;
- 2 (c) the violator's prior history of any violation, which:
- 3 (i) must be a violation of a requirement under the authority of the same chapter and part as the
- 4 violation for which the penalty is being assessed;
- 5 (ii) must be documented in an administrative order or a judicial order or judgment issued within 3 years
- 6 prior to the date of the occurrence of the violation for which the penalty is being assessed; and
- 7 (iii) may not, at the time that the penalty is being assessed, be undergoing or subject to administrative
- 8 appeal or judicial review;
- 9 (d) the economic benefit or savings resulting from the violator's action;
- 10 (e) the violator's good faith and cooperation;
- 11 (f) the amounts voluntarily expended by the violator, beyond what is required by law or order, to
- 12 address or mitigate the violation or impacts of the violation; and
- 13 (g) other matters that justice may require.

14 (2) After the amount of a penalty is determined under subsection (1), the department of environmental

15 quality or the district court, as appropriate, may consider the violator's financial ability to pay the penalty and

16 may institute a payment schedule or suspend all or a portion of the penalty.

17 (3) The department of environmental quality may accept a supplemental environmental project as

18 mitigation for a portion of the penalty. For purposes of this section, a "supplemental environmental project" is an

19 environmentally beneficial project that a violator agrees to undertake in settlement of an enforcement action but

20 which the violator is not otherwise legally required to perform.

21 (4) This section applies to penalties assessed by the department of environmental quality or the

22 district court under Title 75, chapters 2, 5, 6, 11, and 20; Title 75, chapter 10, parts 2, 4, 5, and 12; and Title 76,

23 chapter 4.

24 (5) ~~The board of environmental review and the department of environmental quality may, for the~~

25 ~~statutes listed in subsection (4) for which each has rulemaking authority, adopt rules to implement this section."~~

26

27 **Section 164.** ~~Section 80-15-102, MCA, is amended to read:~~

28 ~~"80-15-102. Definitions. Unless the context requires otherwise, in this chapter, the following~~

1 definitions apply:

2 (1) ~~"Agricultural chemical" means any of the following:~~

3 (a) ~~a pesticide as defined in 80-8-102;~~

4 (b) ~~an isomer, degradation, or metabolic product of a pesticide; or~~

5 (c) ~~a commercial fertilizer as defined in 80-10-101.~~

6 (2) ~~"Aquifer" means a water-bearing, subsurface formation capable of yielding sufficient quantities of~~
7 ~~water to a well for a beneficial use.~~

8 (3) ~~"Best management plans" and "best management practices" mean activities, procedures, and~~
9 ~~practices established by the department, in consultation with the Montana state university-Bozeman extension~~
10 ~~service, to prevent or remedy the introduction of agricultural chemicals into ground water to the extent~~
11 ~~technically and economically practical.~~

12 (4) ~~"Board" means the board of environmental review provided for in 2-15-3502.~~

13 (5)(4) ~~"Confirmatory procedure" means a process for verifying the detection of agricultural chemicals~~
14 ~~in water, soil, and other related media.~~

15 (6)(5) ~~"EPA" means the United States environmental protection agency.~~

16 (7)(6) ~~"Ground water" means any water of the state occupying the voids within a geologic formation~~
17 ~~and within the zone of saturation.~~

18 (8)(7) ~~"Interim numerical standard" means a health-based number that expresses the concentration~~
19 ~~of an agricultural chemical allowed in ground water and that is adopted by a rule of the board pursuant to 80-~~
20 ~~15-201(3) or (4).~~

21 (9)(8) ~~"Margin of safety" means numerical margins that are applied to the no observable effect level in~~
22 ~~an agricultural chemical toxicology study and that are used by the EPA to extrapolate data obtained from~~
23 ~~studies of animals to humans, including sensitive individuals.~~

24 (10)(9) ~~"No observable effect level" means the highest dose level of an agricultural chemical to which a~~
25 ~~laboratory animal is exposed, per unit of body weight, at which no effect is observed, as established by EPA's~~
26 ~~pesticide registration process.~~

27 (11)(10) ~~"Nonpoint source" means a diffuse source of agricultural chemicals resulting from human~~
28 ~~activities over a relatively large area, the effects of which must normally be addressed or controlled by a~~

1 management or conservation practice.

2 ~~(12)(11)~~ "Nonpromulgated federal standard" means a health advisory or a suggested no adverse
3 response level that is published but not promulgated by regulation by EPA and that is a suggested measure of
4 the health risk represented by the concentration of an agricultural chemical in water.

5 ~~(13)(12)~~ "Numerical risk assessment" means a scientific procedure used to measure the statistical
6 probability of human health risk associated with exposure to an agricultural chemical.

7 ~~(14)(13)~~ "Oncogenic potential" means the potential of an agricultural chemical to cause tumors in
8 laboratory animals and the extrapolation of that potential to humans through use of statistical models and other
9 evidence.

10 ~~(15)(14)~~ "Person" means any individual, group, firm, cooperative, corporation, association, partnership,
11 political subdivision, state or federal government agency, or other organization or entity.

12 ~~(16)(15)~~ "Point of standards application" means the specific location in an aquifer where ground water
13 quality and quantity are sampled, measured, evaluated, or otherwise used by either the department or the
14 department of environmental quality to implement the provisions of this chapter.

15 ~~(17)(16)~~ "Point source" means a point source as defined in 75-5-103, including but not limited to
16 chemical mixing, loading, and storage sites and sites of agricultural chemical spills.

17 ~~(18)(17)~~ "Promulgated federal standard" means an agricultural chemical maximum contaminant level
18 as established under the federal Safe Drinking Water Act, a national primary drinking water standard, or an
19 interim drinking water regulation or other EPA regulation based on federal law.

20 ~~(19)(18)~~ "Registrant" means a person as defined in 80-8-102 and 80-10-101.

21 ~~(20)(19)~~ "Standard" means the numerical value expressing the concentration of an agricultural
22 chemical in ground water that, when exceeded, presents a potential human health risk over a lifetime of
23 consumption and that is adopted by a rule of the board ~~department of environmental quality as required by 80-~~
24 ~~15-201.~~

25 ~~(21)(20)~~ "Use" means any act of handling or release of an agricultural chemical or exposure of humans
26 or the environment to an agricultural chemical, including but not limited to application, mixing, loading, storage,
27 disposal, or transportation."

28

1 **Section 79.** Section 80-15-105, MCA, is amended to read:

2 **"80-15-105. Rulemaking.** (1) The ~~board~~ department of environmental quality, subject to the
3 provisions of 80-15-110, shall adopt rules for the administration of this chapter for which the ~~board and the~~
4 department of environmental quality ~~have~~ has responsibility. These rules must include but are not limited to:

5 (a) standards and interim numerical standards for agricultural chemicals in ground water as
6 authorized by 80-15-201;

7 (b) procedures for ground water monitoring as authorized by 80-15-202 and 80-15-203;

8 (c) field and laboratory operational quality assurance, quality control, and confirmatory procedures
9 that are authorized by 80-15-107, 80-15-202, and 80-15-203 and that may include, through adoption by
10 reference, procedures that have been established or approved by EPA for quality assurance and quality
11 control;

12 (d) standards for maintaining the confidentiality of data and information declared confidential by EPA
13 and the confidentiality of chemical registrant data and information protected from disclosure by federal or state
14 law as required by 80-15-108; and

15 (e) administrative civil penalties as authorized by 80-15-412.

16 (2) The department shall adopt rules necessary to carry out its responsibilities under this chapter.
17 These rules must include but are not limited to:

18 (a) procedures for ground water monitoring as authorized by 80-15-202 and 80-15-203;

19 (b) the content and procedures for development of agricultural chemical ground water management
20 plans, including the content of best management practices and best management plans, procedures for
21 obtaining comments from the department of environmental quality on the plans, and the adoption of completed
22 plans and plan modifications as authorized by 80-15-211 through 80-15-218;

23 (c) standards for maintaining the confidentiality of data and information declared confidential by EPA
24 and of chemical registrant data and information protected from disclosure by federal or state law as required by
25 80-15-108;

26 (d) field and laboratory operational quality assurance, quality control, and confirmatory procedures
27 that are authorized by 80-15-107, 80-15-202, and 80-15-203 and that may include, through adoption by
28 reference, procedures that have been established or approved by EPA for quality assurance and quality

1 control;

2 (e) emergency procedures as authorized by 80-15-405;

3 (f) procedures for issuance of compliance orders as authorized by 80-15-403; and

4 (g) procedures for the assessment of administrative civil penalties as authorized by 80-15-412."

5

6 **Section 80.** Section 80-15-110, MCA, is amended to read:

7 **"80-15-110. State regulations no more stringent than federal regulations or guidelines.** (1) After

8 April 14, 1995, except as provided in subsections (2) through (5) or unless required by state law, the ~~board~~

9 department of environmental quality may not adopt a rule to implement this chapter that is more stringent than

10 the comparable federal regulations or guidelines that address the same circumstances. The ~~board~~ department

11 of environmental quality may incorporate by reference comparable federal regulations or guidelines.

12 (2) The ~~board~~ department of environmental quality may adopt a rule to implement this chapter that is
13 more stringent than comparable federal regulations or guidelines only if ~~the board~~ it makes a written finding
14 after a public hearing and public comment and based on evidence in the record that:

15 (a) the proposed state standard or requirement protects public health or the environment of the state;
16 and

17 (b) the state standard or requirement to be imposed can mitigate harm to the public health or
18 environment and is achievable under current technology.

19 (3) The written finding must reference information and peer-reviewed scientific studies contained in
20 the record that forms the basis for the ~~board's~~ conclusion. The written finding must also include information from
21 the hearing record regarding the costs to the regulated community that are directly attributable to the proposed
22 state standard or requirement.

23 (4) (a) A person affected by a rule of the ~~board~~ board of environmental review adopted after January
24 1, 1990, and before April 14, 1995, that that person believes to be more stringent than comparable federal
25 regulations or guidelines may petition the ~~board~~ department of environmental quality ~~BOARD~~ to review the rule. If
26 the ~~board~~ department of environmental quality ~~BOARD~~ determines that the rule is more stringent than
27 comparable federal regulations or guidelines, ~~the board~~ it THE DEPARTMENT shall comply with this section by
28 either revising the rule to conform to the federal regulations or guidelines or by making the written finding, as

1 provided under subsection (2), within a reasonable period of time, not to exceed 12 months after receiving the
2 petition. A petition under this section does not relieve the petitioner of the duty to comply with the challenged
3 rule. The ~~board-department of environmental quality~~ BOARD may charge a petition filing fee in an amount not to
4 exceed \$250.

5 (b) A person may also petition the ~~board-department of environmental quality~~ BOARD for a rule review
6 under subsection (4)(a) if the board ~~of environmental review adopts~~ adopted a rule after January 1, 1990, and
7 before [the effective date of this act] in an area in which no federal regulations or guidelines existed and the
8 federal government subsequently establishes comparable regulations or guidelines that are less stringent than
9 the previously adopted board rule.

10 (5) This section does not apply to a rule adopted under the emergency rulemaking provisions of 2-4-
11 303(1)."

12
13 **Section 81.** Section 80-15-201, MCA, is amended to read:

14 **"80-15-201. Ground water standards.** (1) The ~~board-department of environmental quality~~ shall adopt
15 standards and, as applicable, interim numerical standards for agricultural chemicals in ground water. The
16 standards must be the same as any promulgated or nonpromulgated federal standard established by EPA,
17 although the ~~board-department of environmental quality~~ may determine, pursuant to the requirements of
18 subsection (4), that an interim numerical standard different from either a promulgated or nonpromulgated
19 federal standard is justified. Promulgated federal standards must receive preference. Except as provided in
20 subsections (3) and (4), if more than one nonpromulgated federal standard exists for an agricultural chemical,
21 the ~~board-department of environmental quality~~ must adopt the most recently established nonpromulgated
22 federal standard.

23 (2) The ~~board-department of environmental quality~~ is not required to adopt a standard or interim
24 numerical standard for each agricultural chemical registered in the state. The only standards and interim
25 numerical standards required are for those agricultural chemicals:

26 (a) that are addressed by promulgated and nonpromulgated federal standards;

27 (b) the presence of which has been verified in ground water as provided in 80-15-202; or

28 (c) that the department and the department of environmental quality predict may appear in ground

1 water, in accordance with the procedures and determinations specified in 80-15-202 and 80-15-203.

2 (3) If a promulgated federal standard has not been adopted or a nonpromulgated federal standard
3 has not been published for an agricultural chemical for which the ~~board~~department of environmental quality is
4 required to establish a standard or interim numerical standard as specified in subsections (2)(b) and (2)(c), the
5 department of environmental quality shall request EPA to establish a promulgated or nonpromulgated federal
6 standard. If the department of environmental quality determines that EPA cannot comply with the request within
7 15 days, the ~~board~~department of environmental quality shall adopt an interim numerical standard, provided that
8 the ~~board~~department of environmental quality shall review the interim numerical standard whenever EPA
9 adopts a promulgated federal standard or publishes a nonpromulgated federal standard for the agricultural
10 chemical in question.

11 (4) The ~~board~~department of environmental quality may adopt an interim numerical standard that is
12 different from either a promulgated or nonpromulgated federal standard if there is significant new and relevant
13 technical information available that is scientifically valid. The ~~board~~department of environmental quality shall
14 review the interim numerical standard when EPA establishes or revises the promulgated or nonpromulgated
15 federal standard for the agricultural chemical in question.

16 (5) The ~~board~~department of environmental quality shall consider the following in adopting any interim
17 numerical standard under either subsection (3) or (4):

18 (a) effects on a person weighing 70 kilograms and drinking 2 liters of water per day over a lifetime;
19 and

20 (b) EPA's conclusions regarding the no observable effect level, including the margin of safety
21 identified by EPA, when scientific data indicates oncogenic potential for the agricultural chemical and EPA has
22 determined that a numerical risk assessment is not justified, is inappropriate, or does not serve as the primary
23 toxicological basis for regulation.

24 (6) Nothing in this section may interfere with the ~~board's~~department of environmental quality's
25 responsibility to adopt rules and standards under Title 75, chapter 6."
26

27 **Section 82.** Section 82-4-102, MCA, is amended to read:

28 **"82-4-102. Intent -- findings -- policy and purpose.** (1) The legislature, mindful of its constitutional

obligations under Article II, section 3, and Article IX of the Montana constitution, has enacted The Strip and Underground Mine Siting Act. It is the legislature's intent that the requirements of this part provide adequate remedies for the protection of the environmental life support system from degradation and provide adequate remedies to prevent unreasonable depletion and degradation of natural resources.

(2) It is the policy of this state to provide adequate remedies for the protection of the environmental life support system from degradation and provide adequate remedies to prevent unreasonable depletion and degradation of natural resources.

(3) It is the purpose of this part:

(a) to vest in the department the authority to adopt rules and to review new strip-mine and new underground-mine site locations and reclamation plans and either approve or disapprove those locations and plans and to exercise general administration and enforcement of this part;

~~(b) to vest in the board the authority to adopt rules;~~

~~(e)(b)~~ to satisfy the requirement of Article IX, section 2, of the constitution of this state that all lands disturbed by the taking of natural resources be reclaimed; and

~~(d)(c)~~ to ensure that adequate information is available on areas proposed for strip mining or underground mining so that mining and reclamation plans may be properly formulated to accommodate areas that are suitable for strip mining or underground mining.

(4) This part is an exercise of the general police power to provide for the health and welfare of the people."

Section 169. ~~Section 82-4-103, MCA, is amended to read:~~

~~"82-4-103. Definitions. When used in this part, unless a different meaning clearly appears from the context, the following definitions apply:~~

~~(1) "Board" means the board of environmental review provided for in 2-15-3502.~~

~~(2)(1) "Department" means the department of environmental quality provided for in 2-15-3501.~~

~~(3)(2) "Mineral" means mineral as defined in 82-4-203.~~

~~(4)(3) "New mine" means a strip or underground mining operation proposed for an area of land that the department determines, because of distance from an existing strip mine or underground mine operation or~~

1 their respective facilities or because of important differences in topography, soils, wildlife, geologic structure,
2 aquifers, or vegetation from an existing strip mine or underground mine operation, does not constitute an
3 expansion of an existing operation.

4 ~~(5)(4)~~ "Operation" means all of the premises, facilities, railroad loops, roads, power lines, and
5 equipment used in the process of producing and removing mineral from a designated strip mine or
6 underground mine area.

7 ~~(6)(5)~~ "Operator" means a person who intends to operate a new strip mine or new underground mine
8 involving the removal of more than 10,000 cubic yards of mineral or overburden.

9 ~~(7)(6)~~ "Person" means a person, partnership, corporation, association, or other legal entity or any
10 political subdivision or agency of the state.

11 ~~(8)(7)~~ "Preparatory work" means all onsite disturbances, excluding prospecting, associated with the
12 initiation of a new strip mine or underground mine, including but not limited to the construction of railroad spurs
13 or loops, buildings to house mining operations, roads, storage and train load-out facilities, transmission lines,
14 erection of draglines and loading shovels, and other associated facilities.

15 ~~(9)(8)~~ "Strip mining" means any part of the process followed in the production of mineral by the
16 opencut method, including mining by the auger method or any similar method that penetrates a mineral deposit
17 and removes mineral directly through a series of openings made by a machine that enters the deposit from a
18 surface excavation or any other method or process in which the strata or overburden is removed or displaced in
19 order to recover the mineral.

20 ~~(10)(9)~~ "Underground mining" means any part of the process that is followed in the production of a
21 mineral and that uses vertical or horizontal shafts, slopes, drifts, or incline planes connected with excavations
22 penetrating the mineral stratum or strata."

23
24 **Section 83.** Section 82-4-112, MCA, is amended to read:

25 **"82-4-112. Administration.** (1) The department shall:

26 (a) adopt, after an opportunity for a hearing, general rules pertaining to new strip mines and to new
27 underground mines and preparatory work to accomplish the purposes of this part, rules regarding filing of
28 reports, issuance of permits, and other matters of procedure and administration;

(a)(b) exercise general supervision, administration, and enforcement of this part and all rules and orders adopted under this part;

(b)(c) issue orders requiring operators to adopt remedial measures necessary to comply with this part and rules adopted under this part;

(c)(d) order the suspension of any permit for failure to comply with this part, any rule adopted under this part, or a permit issued pursuant to this part;

(d)(e) issue an order revoking a permit when the requirements set forth by a notice of violation, order of suspension, or order requiring remedial measures have not been complied with according to the terms in the notice or order;

(e)(f) order the halting of any operation that is started without first having obtained a permit as required by this part;

(f)(g) conduct investigations and inspections necessary to ensure compliance with this part; and

(g)(h) encourage and conduct investigations, research, experiments, and demonstrations and collect and disseminate information relating to new strip mines, new underground mines, and reclamation of lands and waters affected by preparatory work.

(2) The ~~board department~~ BOARD shall conduct hearings under this part."

Section 84. Section 82-4-123, MCA, is amended to read:

"82-4-123. Permit fee and surety bond. A fee of \$50 shall be paid before the mine-site location permit required in this part may be issued. The operator shall also file with the department a bond payable to the state of Montana with surety satisfactory to the department in the penal sum to be determined by the department of not less than \$200 or more than \$10,000 for each acre or fraction thereof of the area of land to be disturbed by preparatory work, with a minimum bond of \$5,000, conditioned upon the faithful performance of the requirements set forth in this part and of the rules of the ~~board department~~. In determining the amount of the bond within the above limits, the department shall take into consideration the character and nature of the surface and subsurface disturbances, the future suitable use of the land involved, and the cost of removing or burying facilities, subsidence stabilization, water controls, backfilling, grading, topsoiling, and reclamation to be required. Notwithstanding the above limits, the bond may not be less than the total estimated cost to the state

1 of completing the work described in the reclamation plan."

2

3 **Section 85.** Section 82-4-129, MCA, is amended to read:

4 **"82-4-129. Noncompliance -- suspension of permits.** (1) If any of the requirements of this part or
5 rules or orders of the department have not been complied with within the time limits set by the department or by
6 this part, the department shall serve a notice of noncompliance on the operator or, when necessary, the director
7 of the department shall order the suspension of a permit. The notice or order must be handed to the operator in
8 person or served by certified mail addressed to the permanent address shown on the application for a permit.
9 The notice of noncompliance or order of suspension must specify in what respects the operator has failed to
10 comply with this part or the rules or orders of the department ~~AND THE BOARD and the board.~~ If the operator has
11 not complied with the requirement set forth in the notice of noncompliance or order of suspension within time
12 limits set in the notice or order, the permit may be revoked by order of the ~~board-department~~ BOARD and the
13 performance bond forfeited to the department.

14 (2) Any additional strip-mining or underground-mining or mine-site location permits held by an
15 operator whose mine-site location permit has been revoked must be suspended, and the operator is not eligible
16 to receive another permit or to have the suspended permits reinstated until the operator has complied with all
17 the requirements of this part with respect to previous permits issued to the operator. An operator who has
18 forfeited a bond is not eligible to receive another permit unless the land for which the bond was forfeited has
19 been reclaimed without cost to the state or the operator has paid into the reclamation account a sum together
20 with the value of the bond the department finds adequate to reclaim the lands. The department may not issue
21 any additional permits to an operator who has repeatedly been in noncompliance or violation of this part."

22

23 ~~**Section 173.** Section 82-4-130, MCA, is amended to read:~~

24 ~~**"82-4-130. Procedure for hearings.** (1) A person aggrieved by a final decision of the department~~
25 ~~under this part may request a hearing before the board department by submitting a written request stating the~~
26 ~~reason for the request within 30 days after the department's decision.~~

27 ~~(2) The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4,~~
28 ~~part 6, apply to a hearing held under this part."~~

Section 174. Section 82-4-203, MCA, is amended to read:

~~"82-4-203. Definitions. Unless the context requires otherwise, in this part, the following definitions apply:~~

~~(1) "Abandoned" means an operation in which a mineral is not being produced and that the department determines will not continue or resume operation.~~

~~(2) "Adjacent area" means the area outside the permit area where a resource or resources, determined in the context in which the term is used, are or could reasonably be expected to be adversely affected by proposed mining operations, including probable impacts from underground workings.~~

~~(3) (a) "Alluvial valley floor" means the unconsolidated stream-laid deposits holding streams where water availability is sufficient for subirrigation or flood irrigation agricultural activities.~~

~~(b) The term does not include upland areas that are generally overlain by a thin veneer of colluvial deposits composed chiefly of debris from sheet erosion and deposits by unconcentrated runoff or slope wash, together with talus, other mass movement accumulation, and windblown deposits.~~

~~(4) "Approximate original contour" means that surface configuration achieved by backfilling and grading of the mined area so that the reclaimed area, including any terracing or access roads, closely resembles the general surface configuration of the land prior to mining and blends into and complements the drainage pattern of the surrounding terrain, with all highwalls, spoil piles, and coal refuse piles eliminated, so that:~~

~~(a) the reclaimed terrain closely resembles the general surface configuration if it is comparable to the premine terrain. For example, if the area was basically level or gently rolling before mining, it should retain these features after mining, recognizing that rolls and dips need not be restored to their original locations and that level areas may be increased.~~

~~(b) the reclaimed area blends with and complements the drainage pattern of the surrounding area so that water intercepted within or from the surrounding terrain flows through and from the reclaimed area in an unobstructed and controlled manner;~~

~~(c) postmining drainage basins may differ in size, location, configuration, orientation, and density of ephemeral drainageways compared to the premining topography if they are hydrologically stable, soil erosion is~~

1 controlled to the extent appropriate for the postmining land use, and the hydrologic balance is protected; and

2 ~~(d) the reclaimed surface configuration is appropriate for the postmining land use.~~

3 ~~(5) "Aquifer" means any geologic formation or natural zone beneath the earth's surface that contains~~
4 ~~or stores water and transmits it from one point to another in quantities that permit or have the potential to permit~~
5 ~~economic development as a water source.~~

6 ~~(6) (a) "Area of land affected" means the area of land from which overburden is to be or has been~~
7 ~~removed and upon which the overburden is to be or has been deposited.~~

8 ~~(b) The term includes:~~

9 ~~(i) all land overlying any tunnels, shafts, or other excavations used to extract the mineral;~~

10 ~~(ii) lands affected by the construction of new railroad loops and roads or the improvement or use of~~
11 ~~existing railroad loops and roads to gain access and to haul the mineral;~~

12 ~~(iii) processing facilities at or near the mine site or other mine-associated facilities, waste deposition~~
13 ~~areas, treatment ponds, and any other surface or subsurface disturbance associated with strip mining or~~
14 ~~underground mining; and~~

15 ~~(iv) all activities necessary and incident to the reclamation of the mining operations.~~

16 ~~(7) "Bench" means the ledge, shelf, table, or terrace formed in the contour method of strip mining.~~

17 ~~(8) "Board" means the board of environmental review provided for in 2-15-3502.~~

18 ~~(9)(8) "Coal conservation plan" means the planned course of conduct of a strip or underground~~
19 ~~mining operation and includes plans for the removal and use of minable and marketable coal located within the~~
20 ~~area planned to be mined.~~

21 ~~(10)(9) (a) "Coal preparation" means the chemical or physical processing of coal and its cleaning,~~
22 ~~concentrating, or other processing or preparation.~~

23 ~~(b) The term does not mean the conversion of coal to another energy form or to a gaseous or liquid~~
24 ~~hydrocarbon, except for incidental amounts that do not leave the plant, nor does the term mean processing for~~
25 ~~other than commercial purposes.~~

26 ~~(11)(10) "Coal preparation plant" means a commercial facility where coal is subject to coal preparation.~~
27 ~~The term includes commercial facilities associated with coal preparation activities but is not limited to loading~~
28 ~~buildings, water treatment facilities, water storage facilities, settling basins and impoundments, and coal~~

1 ~~processing and other waste disposal areas.~~

2 ~~(12)(11) "Contour strip mining" means that strip mining method commonly carried out in areas of rough~~
3 ~~and hilly topography in which the coal or mineral seam outcrops along the side of the slope and entrance are~~
4 ~~made to the seam by excavating a bench or table cut at and along the site of the seam outcropping, with the~~
5 ~~excavated overburden commonly being cast down the slope below the mineral seam and the operating bench.~~

6 ~~(13)(12) "Cropland" means land used for the production of adapted crops for harvest, alone or in~~
7 ~~rotation with grasses and legumes, that include row crops, small grain crops, hay crops, nursery crops, orchard~~
8 ~~crops, and other similar crops.~~

9 ~~(14)(13) "Degree" means a measurement from the horizontal. In each case, the measurement is~~
10 ~~subject to a tolerance of 5% error.~~

11 ~~(15)(14) "Department" means the department of environmental quality provided for in 2-15-3501.~~

12 ~~(16)(15) "Developed water resources" means land used for storing water for beneficial uses, such as~~
13 ~~stockponds, irrigation, fire protection, flood control, and water supply.~~

14 ~~(17)(16) "Ephemeral drainageway" means a drainageway that flows only in response to precipitation in~~
15 ~~the immediate watershed or in response to the melting of snow or ice and is always above the local water table.~~

16 ~~(18)(17) "Failure to conserve coal" means the nonremoval or nonuse of minable and marketable coal~~
17 ~~by an operation. However, the nonremoval or nonuse of minable and marketable coal that occurs because of~~
18 ~~compliance with reclamation standards established by the department is not considered failure to conserve~~
19 ~~coal.~~

20 ~~(19)(18) "Fill bench" means that portion of a bench or table that is formed by depositing overburden~~
21 ~~beyond or downslope from the cut section as formed in the contour method of strip mining.~~

22 ~~(20)(19) "Fish and wildlife habitat" means land dedicated wholly or partially to the production,~~
23 ~~protection, or management of species of fish or wildlife.~~

24 ~~(21)(20) "Forestry" means land used or managed for the long-term production of wood, wood fiber, or~~
25 ~~wood-derived products.~~

26 ~~(22)(21) "Grazing land" means land used for grasslands and forest lands where the indigenous~~
27 ~~vegetation is actively managed for livestock grazing or browsing or occasional hay production.~~

28 ~~(23)(22) "Higher or better uses" means postmining land uses that have a higher economic value or~~

1 noneconomic benefit to the landowner or the community than the premining land uses.

2 ~~(24)(23)~~ "Hydrologic balance" means the relationship between the quality and quantity of water inflow
3 to, water outflow from, and water storage in a hydrologic unit, such as a drainage basin, aquifer, soil zone, lake,
4 or reservoir, and encompasses the dynamic relationships among precipitation, runoff, evaporation, and
5 changes in ground water and surface water storage.

6 ~~(25)(24)~~ "Imminent danger to the health and safety of the public" means the existence of any condition
7 or practice or any violation of a permit or other requirement of this part in a strip or underground coal mining
8 and reclamation operation that could reasonably be expected to cause substantial physical harm to persons
9 outside the permit area before the condition, practice, or violation can be abated. A reasonable expectation of
10 death or serious injury before abatement exists if a rational person, subjected to the same conditions or
11 practices giving rise to the peril, would not willingly be exposed to the danger during the time necessary for
12 abatement.

13 ~~(26)(25)~~ "Industrial or commercial" means land used for:

14 (a) ~~extraction or transformation of materials for fabrication of products, wholesaling of products, or~~
15 ~~long-term storage of products. This includes all heavy and light manufacturing facilities.~~

16 (b) ~~retail or trade of goods or services, including hotels, motels, stores, restaurants, and other~~
17 ~~commercial establishments.~~

18 ~~(27)(26)~~ (a) "In situ coal gasification" means a method of in-place coal mining where limited quantities
19 of overburden are disturbed to install a conduit or well and coal is mined by injecting or recovering a liquid,
20 solid, sludge, or gas that causes the leaching, dissolution, gasification, liquefaction, or extraction of the coal.

21 (b) ~~In situ coal gasification does not include the storage of carbon dioxide in a geologic storage~~
22 ~~reservoir, the primary or enhanced recovery of naturally occurring oil and gas, or any related process regulated~~
23 ~~by the board of oil and gas conservation pursuant to Title 82, chapter 11.~~

24 ~~(28)(27)~~ "Intermittent stream" means a stream or reach of a stream that is below the water table for at
25 least some part of the year and that obtains its flow from both ground water discharge and surface runoff.

26 ~~(29)(28)~~ "Land use" means specific uses or management-related activities, rather than the vegetative
27 cover of the land. Land uses may be identified in combination when joint or seasonal uses occur and may
28 include land used for support facilities that are an integral part of the land use. Land use categories include

1 cropland, developed water resources, fish and wildlife habitat, forestry, grazing land, industrial or commercial,
2 pastureland, land occasionally cut for hay, recreation, or residential.

3 ~~(30)(29)~~ "Marketable coal" means a minable coal that is economically feasible to mine and is fit for sale
4 in the usual course of trade.

5 ~~(31)(30)~~ "Material damage" means, with respect to protection of the hydrologic balance, degradation or
6 reduction by coal mining and reclamation operations of the quality or quantity of water outside of the permit
7 area in a manner or to an extent that land uses or beneficial uses of water are adversely affected, water quality
8 standards are violated, or water rights are impacted. Violation of a water quality standard, whether or not an
9 existing water use is affected, is material damage.

10 ~~(32)(31)~~ "Method of operation" means the method or manner by which the cut, open pit, shaft, or
11 excavation is made, the overburden is placed or handled, water is controlled, and other acts are performed by
12 the operator in the process of uncovering and removing the minerals that affect the reclamation of the area of
13 land affected.

14 ~~(33)(32)~~ "Minaable coal" means that coal that can be removed through strip or underground mining
15 methods adaptable to the location that coal is being mined or is planned to be mined.

16 ~~(34)(33)~~ "Mineral" means coal and uranium.

17 ~~(35)(34)~~ "Operation" means:

18 (a) all of the premises, facilities, railroad loops, roads, and equipment used in the process of
19 producing and removing mineral from and reclaiming a designated strip mine or underground mine area,
20 including coal preparation plants; and

21 (b) all activities, including excavation incident to operations, or prospecting for the purpose of
22 determining the location, quality, or quantity of a natural mineral deposit.

23 ~~(36)(35)~~ "Operator" means a person engaged in:

24 (a) strip mining or underground mining who removes or intends to remove more than 10,000 cubic
25 yards of mineral or overburden;

26 (b) coal mining who removes or intends to remove more than 250 tons of coal from the earth by
27 mining within 12 consecutive calendar months in any one location;

28 (c) operating a coal preparation plant; or

1 ~~(d) uranium mining using in situ methods.~~

2 ~~(37)(36) "Overburden" means:~~

3 ~~(a) all of the earth and other materials that lie above a natural mineral deposit; and~~

4 ~~(b) the earth and other material after removal from their natural state in the process of mining.~~

5 ~~(38)(37) "Pastureland" means land used primarily for the long-term production of adapted,~~
6 ~~domesticated forage plants to be grazed by livestock or occasionally cut and cured for livestock feed.~~

7 ~~(39)(38) "Perennial stream" means a stream or part of a stream that flows continuously during all of the~~
8 ~~calendar year as a result of ground water discharge or surface runoff.~~

9 ~~(40)(39) "Person" means a person, partnership, corporation, association, or other legal entity or any~~
10 ~~political subdivision or agency of the state or federal government.~~

11 ~~(41)(40) "Prime farmland" means land that:~~

12 ~~(a) meets the criteria for prime farmland prescribed by the United States secretary of agriculture in the~~
13 ~~Federal Register; and~~

14 ~~(b) historically has been used for intensive agricultural purposes.~~

15 ~~(42)(41) "Prospecting" means:~~

16 ~~(a) the gathering of surface or subsurface geologic, physical, or chemical data by mapping, trenching,~~
17 ~~or geophysical or other techniques necessary to determine:~~

18 ~~(i) the quality and quantity of overburden in an area; or~~

19 ~~(ii) the location, quantity, or quality of a mineral deposit; or~~

20 ~~(b) the gathering of environmental data to establish the conditions of an area before beginning strip-~~
21 ~~or underground coal mining and reclamation operations under this part.~~

22 ~~(43)(42) "Reclamation" means backfilling, subsidence stabilization, water control, grading, highwall~~
23 ~~reduction, topsoiling, planting, revegetation, and other work conducted on lands affected by strip mining or~~
24 ~~underground mining under a plan approved by the department to make those lands capable of supporting the~~
25 ~~uses that those lands were capable of supporting prior to any mining or to higher or better uses.~~

26 ~~(44)(43) "Recovery fluid" means any material that flows or moves, whether in semisolid, liquid, sludge,~~
27 ~~gas, or some other form or state, used to dissolve, leach, gasify, or extract coal.~~

28 ~~(45)(44) "Recreation" means land used for public or private leisure-time activities, including developed~~

1 recreation facilities, such as parks, camps, and amusement areas, as well as areas for less intensive uses,
2 such as hiking, canoeing, and other undeveloped recreational uses.

3 ~~(46)(45)~~ "Reference area" means a land unit maintained under appropriate management for the
4 purpose of measuring vegetation ground cover, productivity, and plant species diversity that are produced
5 naturally or by crop production methods approved by the department. Reference areas must be representative
6 of geology, soil, slope, and vegetation in the permit area.

7 ~~(47)(46)~~ "Remining" means conducting surface coal mining and reclamation operations that affect
8 previously mined areas (for example, the recovery of additional mineral from existing gob or tailings piles).

9 ~~(48)(47)~~ "Residential" means land used for single and multiple family housing, mobile home parks, or
10 other residential lodgings.

11 ~~(49)(48)~~ "Restore" or "restoration" means reestablishment after mining and reclamation of the land use
12 that existed prior to mining or to higher or better uses.

13 ~~(50)(49)~~ (a) "Strip mining" means any part of the process followed in the production of mineral by the
14 open-cut method, including mining by the auger method or any similar method that penetrates a mineral deposit
15 and removes mineral directly through a series of openings made by a machine that enters the deposit from a
16 surface excavation or any other mining method or process in which the strata or overburden is removed or
17 displaced in order to recover the mineral.

18 ~~(b)~~ For the purposes of this part only, strip mining also includes remining and coal preparation.

19 ~~(c)~~ The terms "remining" and "coal preparation" are not included in the definition of "strip mining" for
20 purposes of Title 15, chapter 35, part 1.

21 ~~(51)(50)~~ "Subsidence" means a vertically downward movement of overburden materials resulting from
22 the actual mining of an underlying mineral deposit or associated underground excavations.

23 ~~(52)(51)~~ "Surface owner" means:

24 ~~(a)~~ a person who holds legal or equitable title to the land surface;

25 ~~(b)~~ a person who personally conducts farming or ranching operations upon a farm or ranch unit to be
26 directly affected by strip mining operations or who receives directly a significant portion of income from farming
27 or ranching operations;

28 ~~(c)~~ the state of Montana when the state owns the surface; or

(d) ~~the appropriate federal land management agency when the United States government owns the surface.~~

~~(53)(52) "Topsoil" means the unconsolidated mineral matter that is naturally present on the surface of the earth, that has been subjected to and influenced by genetic and environmental factors of parent material, climate, macroorganisms and microorganisms, and topography, all acting over a period of time, and that is necessary for the growth and regeneration of vegetation on the surface of the earth.~~

~~(54)(53) "Underground mining" means any part of the process that is followed in the production of a mineral and that uses vertical or horizontal shafts, slopes, drifts, or incline planes connected with excavations penetrating the mineral stratum or strata. The term includes mining by in situ methods.~~

~~(55)(54) "Unwarranted failure to comply" means:~~

~~(a) the failure of a permittee to prevent the occurrence of any violation of a permit or any requirement of this part because of indifference, lack of diligence, or lack of reasonable care; or~~

~~(b) the failure to abate any violation of a permit or of this part because of indifference, lack of diligence, or lack of reasonable care.~~

~~(56)(55) "Waiver" means a document that demonstrates the clear intention to release rights in the surface estate for the purpose of permitting the extraction of subsurface minerals by strip-mining methods.~~

~~(57)(56) "Wildlife habitat enhancement feature" means a component of the reclaimed landscape, established in conjunction with land uses other than fish and wildlife habitat, for the benefit of wildlife species, including but not limited to tree and shrub plantings, food plots, wetland areas, water sources, rock outcrops, microtopography, or raptor perches.~~

~~(58)(57) "Written consent" means a statement that is executed by the owner of the surface estate and that is written on a form approved by the department to demonstrate that the owner consents to entry of an operator for the purpose of conducting strip-mining operations and that the consent is given only to strip-mining and reclamation operations that fully comply with the terms and requirements of this part."~~

Section 86. Section 82-4-205, MCA, is amended to read:

"82-4-205. Administration by department AND BOARD and board. (1) The department shall adopt, after an opportunity for a hearing, general rules pertaining to strip mining and to underground mining to

1 accomplish the purposes of this part. The department may adopt rules with respect to filing of reports, issuance
2 of permits, monitoring, and other matters of procedure and administration.

3 ~~(1)~~(2) The department:

4 (a) shall exercise general supervision, administration, and enforcement of this part and all rules and
5 orders adopted under this part;

6 (b) shall review for approval or disapproval all plans and specifications submitted by an operator for
7 the method of operation, subsidence stabilization, water control, backfilling, grading, highwall reduction, and
8 topsoiling and for the reclamation of the area of land affected by the operator's operation;

9 (c) shall issue orders requiring an operator to adopt the remedial measures necessary to comply with
10 this part and rules adopted under this part;

11 (d) shall order the suspension of any permit for failure to comply with this part or a rule adopted under
12 this part;

13 (e) shall issue an order revoking a permit when the requirements set forth by a notice of violation,
14 order of suspension, or order requiring remedial measures have not been complied with according to the terms
15 in the notice or order;

16 (f) shall order the halting of any operation that is started without first having obtained a permit as
17 required by this part or order the cessation of operations not in compliance with this part in accordance with 82-
18 4-251;

19 (g) shall conduct public hearings required under this part or rules adopted ~~by the board~~ pursuant to
20 this part;

21 (h) shall conduct investigations and inspections necessary to ensure compliance with this part;

22 ~~(i) shall conduct contested case hearings under this part; and~~

23 ~~(i)(i)~~ (i) may encourage and conduct investigations, research, experiments, and demonstrations and
24 collect and disseminate information relating to strip mining and to underground mining and reclamation of lands
25 and waters affected by strip mining and underground mining.

26 ~~(2) The board shall conduct contested case hearings under this part.~~

27 (2) THE BOARD SHALL CONDUCT CONTESTED CASE HEARINGS UNDER THIS PART."

Section 176. Section 82-4-206, MCA, is amended to read:

~~"82-4-206. Procedure for contested case hearings. (1) An applicant, permittee, or person with an interest that is or may be adversely affected may request a hearing before the board department on any of the following decisions of the department by submitting a written request stating the reason for the request within 30 days after the department's decision:~~

~~(a) approval or denial of an application for a permit pursuant to 82-4-231;~~

~~(b) approval or denial of an application for a prospecting permit pursuant to 82-4-226;~~

~~(c) approval or denial of an application to increase or reduce a permit area pursuant to 82-4-225;~~

~~(d) approval or denial of an application to renew or revise a permit pursuant to 82-4-221; or~~

~~(e) approval or denial of an application to transfer a permit pursuant to 82-4-238 or 82-4-250.~~

~~(2) The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing before the board department under subsection (1)."~~

Section 87. Section 82-4-207, MCA, is amended to read:

"82-4-207. Rulemaking -- in situ coal gasification. (1) Within 1 year of October 1, 2011, and in accordance with subsection (3), the ~~board~~ department shall adopt rules necessary to regulate underground mining using in situ coal gasification.

(2) Unless required by this part, the ~~board~~ department may not adopt a rule to regulate in situ coal gasification that is more stringent than the comparable federal regulations or guidelines that address the same circumstances.

(3) The ~~board~~ department shall solicit, document, consider, and address comments from the board of oil and gas conservation provided for in 2-15-3303 in developing rules pursuant to subsection (1)."

Section 88. Section 82-4-223, MCA, is amended to read:

"82-4-223. Surety bond. (1) Before a permit may be issued, the operator shall file with the department a bond payable to the state of Montana with surety satisfactory to the department in an amount to be determined by the department of not less than \$200 for each acre or fraction of an acre of the area of land affected, with a minimum bond of \$10,000, conditioned upon the faithful performance of the requirements set

1 forth in this part and of the rules of the ~~board~~ department. The operator may elect to deposit cash, negotiable
2 bonds, or negotiable certificates of deposit of any bank organized or transacting business in the United States.
3 The cash deposit or market value of these securities must be equal to or greater than the amount of the bond
4 required for the bonded area. The level of bonding must be relative to the degree of disturbance projected by
5 the original permit and the annual report. A political subdivision or agency of the state need not file a bond
6 unless required to do so by the department. The department shall adjust the amount of bond required if the cost
7 of reclamation changes.

8 (2) In determining the amount of the bond, the department shall take into consideration the character
9 and nature of the overburden, the future suitable use of the land involved, and the cost of backfilling, grading,
10 highwall reduction, subsidence stabilization, water control, topsoiling, and reclamation to be required, but the
11 bond may not be less than the total estimated cost to the state of completing the work described in the
12 reclamation plan."

13
14 **Section 89.** Section 82-4-226, MCA, is amended to read:

15 **"82-4-226. Prospecting permit.** (1) Except as provided in subsection (7), prospecting by any person
16 on land not included in a valid strip-mining or underground-mining permit is unlawful without possessing a valid
17 prospecting permit issued by the department as provided in this section. A prospecting permit may not be
18 issued until the person submits an application, the application is examined, amended if necessary, and
19 approved by the department, and an adequate reclamation performance bond is posted, all of which
20 prerequisites must be done in conformity with the requirements of this part.

21 (2) An application for a prospecting permit filed pursuant to subsection (1) must be made in writing,
22 notarized, and submitted to the department upon forms prepared and furnished by it. The application must
23 include among other things a prospecting map and a prospecting reclamation plan of substantially the same
24 character as required for a surface-mining or underground-mining map and reclamation plan under this part.
25 The department shall determine by rules the precise nature of the required prospecting map and reclamation
26 plan. Any applicant who intends to prospect by means of core drilling shall specify the location and number of
27 holes to be drilled, methods to be used in sealing aquifers, and other information that may be required by the
28 department. The applicant shall state what types of prospecting and excavating techniques will be employed on

1 the affected land. The application must also include any other or further information that the department may
2 require.

3 (3) Before the department gives final approval to the prospecting permit application, the applicant
4 shall file with the department a reclamation and revegetation bond in a form and in an amount as determined in
5 the same manner for strip-mining or underground-mining reclamation and revegetation bonds under this part.

6 (4) In the event that the holder of a prospecting permit desires to strip mine or underground mine the
7 area covered by the prospecting permit and has fulfilled all the requirements for a strip-mining or underground-
8 mining permit, the department may permit the postponement of the reclamation of the acreage prospected if
9 that acreage is incorporated into the complete reclamation plan submitted with the application for a strip-mining
10 or underground-mining permit. Any land actually affected by prospecting or excavating under a prospecting
11 permit and not covered by the strip-mining or underground-mining reclamation plan must be promptly
12 reclaimed.

13 (5) The prospecting permit is valid for 1 year and is subject to renewal, suspension, and revocation in
14 the same manner as strip-mining or underground-mining permits under this part.

15 (6) The holder of the prospecting permit shall file with the department the same progress reports,
16 maps, and revegetation progress reports as are required of strip-mining or underground-mining operators under
17 this part.

18 (7) (a) Prospecting that is not conducted in an area designated unsuitable for coal mining pursuant to
19 82-4-227 or 82-4-228, that is not conducted for the purpose of determining the location, quality, or quantity of a
20 mineral deposit, and that does not remove more than 250 tons of coal is not subject to subsections (1) through
21 (6). However, a person who conducts prospecting described in this subsection (7)(a) shall file with the
22 department a notice of intent to prospect that contains the information required by the department before
23 commencing prospecting operations. If this prospecting substantially disturbs the natural land surface, it must
24 be conducted in accordance with the performance standards of the ~~board's~~ department's rules regulating the
25 conduct and reclamation of prospecting operations that remove coal. The department may inspect these
26 prospecting and reclamation operations at any reasonable time.

27 (b) (i) Prospecting conducted to determine the location, quality, or quantity of coal outside an area
28 designated unsuitable that is not included in a valid strip-mining or underground-mining permit, that does not

1 substantially disturb the land surface, and that does not remove more than 250 tons of coal is not subject to
2 subsections (1) and (2) but may not be conducted without a valid prospecting permit issued pursuant to
3 subsection (8).

4 (ii) For purposes of this subsection (7)(b), the drilling of coal prospecting holes, the installation and use
5 of associated disposal pits, and the installation of ground water monitoring wells does not constitute substantial
6 disturbance.

7 (8) (a) An application for a coal prospecting permit required by subsection (7)(b) must contain:

8 (i) the name, address, and telephone number of the person who seeks to prospect;

9 (ii) the name, address, and telephone number of the person's representative who will be present at and
10 responsible for conducting the prospecting activities;

11 (iii) a narrative describing the proposed prospecting area or a map of the prospecting area at a scale of
12 1:24,000 or greater showing:

13 (A) the general location of drill holes and trenches;

14 (B) existing and proposed roads;

15 (C) occupied dwellings;

16 (D) topographic features;

17 (E) bodies of water; and

18 (F) pipelines;

19 (iv) a copy of the documents upon which the applicant bases its legal right to prospect, including
20 documentation that the owners of the land affected have been notified and understand that the department will
21 make investigations and inspections to ensure compliance;

22 (v) a statement of the period of intended prospecting; and

23 (vi) a description of the method of prospecting to be used and the practices that will be followed to
24 protect the environment and reclaim disturbed areas, including plugging of prospecting holes, in accordance
25 with rules adopted by the ~~board~~ department.

26 (b) Within 10 working days of receipt of an application, the department shall notify the applicant in
27 writing as to whether the application is complete and preliminarily acceptable. If the department determines that
28 the application is not complete or not preliminarily acceptable, the department shall include a detailed

1 identification of information necessary to cure the deficiency.

2 (c) Within 5 working days of receipt of the applicant's response to the identified deficiencies, the
3 department shall review the response and notify the person as to whether the application is complete and
4 preliminarily acceptable. If the department determines the application is not complete or preliminarily
5 acceptable, the department shall notify the person in writing and include a detailed identification of information
6 necessary to make the application complete and preliminarily acceptable.

7 (d) When the department determines that the application is complete and preliminarily acceptable, the
8 department shall notify the applicant in writing. The notification must include the amount of bond that is required
9 to be posted in order for the permit to be issued.

10 (e) Upon receipt of the department's determination of preliminary acceptability, the applicant shall
11 place an advertisement in a newspaper of general circulation in the locality of the proposed prospecting. The
12 notice must describe the application and a place in the locality where the public may examine the application
13 and must notify the public that it may submit written comments by delivering or mailing them to the department
14 within 10 days following publication of the notice.

15 (f) After close of the public comment period, the department shall notify the applicant as to whether
16 the application is acceptable. The department shall issue the notification within 5 working days of the close of
17 the comment period if no comments are received and within 10 working days if comments are received. In the
18 notice of acceptability, the department shall notify the applicant of any adjustment in the amount of the bond.

19 (g) A permit issued pursuant to this subsection (8) is subject to subsections (3) through (6)."
20

21 **Section 180.** Section 82-4-227, MCA, is amended to read:

22 ~~"82-4-227. Refusal of permit -- applicant violator system. (1) An application for a prospecting,~~
23 ~~strip-mining, or underground-mining permit or major revision may not be approved by the department unless,~~
24 ~~on the basis of the information set forth in the application, in an onsite inspection, and in an evaluation of the~~
25 ~~operation by the department, the applicant has affirmatively demonstrated that the requirements of this part and~~
26 ~~rules will be observed and that the proposed method of operation, backfilling, grading, subsidence stabilization,~~
27 ~~water control, highwall reduction, topsoiling, revegetation, or reclamation of the affected area can be carried out~~
28 ~~consistently with the purpose of this part. The applicant for a permit or major revision has the burden of~~

1 establishing that the application is in compliance with this part and the rules adopted under it.

2 ~~(2) The department may not approve the application for a prospecting, strip-mining, or underground-~~
3 ~~mining permit when the area of land described in the application includes land that has special, exceptional,~~
4 ~~critical, or unique characteristics or when mining or prospecting on that area would adversely affect the use,~~
5 ~~enjoyment, or fundamental character of neighboring land that has special, exceptional, critical, or unique~~
6 ~~characteristics. For the purposes of this part, land is defined as having these characteristics if it possesses~~
7 ~~special, exceptional, critical, or unique:~~

8 ~~(a) biological productivity, the loss of which would jeopardize certain species of wildlife or domestic~~
9 ~~stock;~~

10 ~~(b) ecological fragility, in the sense that the land, once adversely affected, could not return to its~~
11 ~~former ecological role in the reasonably foreseeable future;~~

12 ~~(c) ecological importance, in the sense that the particular land has such a strong influence on the total~~
13 ~~ecosystem of which it is a part that even temporary effects felt by it could precipitate a systemwide reaction of~~
14 ~~unpredictable scope or dimensions; or~~

15 ~~(d) scenic, historic, archaeologic, topographic, geologic, ethnologic, scientific, cultural, or recreational~~
16 ~~significance. In applying the provisions of this subsection (2)(d), particular attention should be paid to the~~
17 ~~inadequate preservation previously accorded Plains Indian history and culture.~~

18 ~~(3) The department may not approve an application for a strip or underground coal mining permit or~~
19 ~~major revision unless the application affirmatively demonstrates that:~~

20 ~~(a) the assessment of the probable cumulative impact of all anticipated mining in the area on the~~
21 ~~hydrologic balance has been made by the department and the proposed operation of the mining operation has~~
22 ~~been designed to prevent material damage to the hydrologic balance outside the permit area; and~~

23 ~~(b) the proposed strip or underground coal mining operation would not:~~

24 ~~(i) interrupt, discontinue, or preclude farming on alluvial valley floors that are irrigated or naturally~~
25 ~~subirrigated, excluding undeveloped rangelands that are not significant to farming on alluvial valley floors and~~
26 ~~excluding land about which the department finds that if any farming will be interrupted, discontinued, or~~
27 ~~precluded, it is of such small acreage as to be of negligible impact on the farm's agricultural production; or~~

28 ~~(ii) materially damage the quantity or quality of water in surface water or underground water systems~~

1 that supply the valley floors described in subsection (3)(b)(i).

2 ~~(4) Subsection (3)(b) does not affect those strip or underground coal mining operations that in the~~
3 ~~year preceding the enactment of Public Law 95-87 produced coal in commercial quantities and were located~~
4 ~~within or adjacent to alluvial valley floors or had obtained specific permit approval by the department to conduct~~
5 ~~strip or underground coal mining operations within alluvial valley floors. If coal deposits are precluded from~~
6 ~~being mined under this subsection, the director of the department shall certify to the secretary of interior that the~~
7 ~~mineral owner or lessee may be eligible for participation in coal exchange programs pursuant to section 510(5)~~
8 ~~of Public Law 95-87.~~

9 ~~(5) (a) If the area proposed to be mined contains prime farmland, the department may not grant a~~
10 ~~permit to mine coal on the prime farmland unless it finds in writing that the applicant:~~

11 ~~(i) has the technological capability to restore the mined area, within a reasonable time, to levels of~~
12 ~~yield equivalent to or higher than nonmined prime farmland in the surrounding area under equivalent levels of~~
13 ~~management; and~~

14 ~~(ii) can meet the soil reconstruction standards of 82-4-232(3).~~

15 ~~(b) Nothing in this subsection (5) applies to a permit issued prior to August 3, 1977, or to any~~
16 ~~revisions or renewals of the permit or to any existing strip or underground mining operations for which a permit~~
17 ~~was issued prior to August 3, 1977.~~

18 ~~(6) If the department finds that the overburden on any part of the area of land described in the~~
19 ~~application for a prospecting, strip mining, or underground mining permit is such that experience in the state~~
20 ~~with a similar type of operation upon land with similar overburden shows that substantial deposition of sediment~~
21 ~~in streambeds, subsidence, landslides, or water pollution cannot feasibly be prevented, the department shall~~
22 ~~delete that part of the land described in the application upon which the overburden exists. The burden is on the~~
23 ~~applicant to demonstrate that any area should not be deleted under this subsection.~~

24 ~~(7) If the department finds that the operation will constitute a hazard to a dwelling, public building,~~
25 ~~school, church, cemetery, commercial or institutional building, public road, stream, lake, or other public~~
26 ~~property, the department shall delete those areas from the prospecting, strip mining, or underground mining~~
27 ~~permit application before it can be approved. Strip or underground coal mining may not be allowed:~~

28 ~~(a) within 300 feet of an occupied dwelling, unless waived by the owner;~~

~~(b) within 300 feet of any public building, school, church, community, or institutional building, or public park;~~

~~(c) within 100 feet of a cemetery;~~

~~(d) within 100 feet of the outside right-of-way line of any public road, except where mine access roads or haulage roads join the right-of-way line. The department may permit the roads to be relocated or the area affected to lie within 100 feet of the road if, after public notice and opportunity for public hearing in the locality, a written finding is made that the interests of the public and the landowners affected will be protected.~~

~~(8) Strip mining or underground mining may not be conducted within 500 feet of active or abandoned underground mines in order to prevent breakthroughs and to protect health or safety of miners. However, the department shall permit an operator to mine near, through, or partially through an abandoned underground mine or closer to an active underground mine if:~~

~~(a) the nature, timing, and sequencing of specific strip mine activities and specific underground mine activities are jointly approved by the department and the regulatory authority concerned with the health and safety of underground miners; and~~

~~(b) the operations will result in improved resource recovery, abatement of water pollution, or elimination of hazards to the health and safety of the public.~~

~~(9) The department may not approve an application for a strip or underground coal mining operation if the area proposed to be mined is included:~~

~~(a) within an area designated unsuitable for strip or underground coal mining; or~~

~~(b) within an area under review for this designation under an administrative proceeding, unless in an area as to which an administrative proceeding has commenced pursuant to this part, the operator making the permit application demonstrates that prior to January 1, 1977, the operator made substantial legal and financial commitments in relation to the operation for which the operator is applying for a permit.~~

~~(10) A permit or major permit revision for a strip or underground coal mining operation may not be issued unless the applicant has affirmatively demonstrated by its coal conservation plan that failure to conserve coal will not occur. The department may require the applicant to submit any information it considers necessary for review of the coal conservation plan.~~

~~(11) Whenever information available to the department indicates that a strip or underground coal-~~

1 mining operation that is owned or controlled by the applicant or by any person who owns or controls the
2 applicant is currently in violation of Public Law 95-87, as amended, any state law required by Public Law 95-87,
3 as amended, or any law, rule, or regulation of the United States or of any department or agency in the United
4 States pertaining to air or water environmental protection, the department may not issue a strip or
5 underground coal mining permit or amendment, other than an incidental boundary revision, until the applicant
6 submits proof that the violation has been corrected or is in the process of being corrected to the satisfaction of
7 the administering agency.

8 (12) The department may not issue a strip or underground coal mining permit or amendment, other
9 than an incidental boundary revision, to any applicant that it finds, after an opportunity for hearing, owns or
10 controls any strip or underground coal mining operation that has demonstrated a pattern of willful violations of
11 Public Law 95-87, as amended, or any state law required by Public Law 95-87, as amended, when the nature
12 and duration of the violations and resulting irreparable damage to the environment indicate an intent not to
13 comply with the provisions of this part.

14 (13) Subject to valid existing rights, no strip or underground coal mining operations except those that
15 existed as of August 3, 1977, may be conducted:

16 (a) on lands within the boundaries of units of the national park system, the national wildlife refuge
17 system, the national wilderness preservation system, the national system of trails, the wild and scenic rivers
18 system, including study rivers designated under section 5(a) of the Wild and Scenic Rivers Act or study rivers or
19 study river corridors established in any guidelines issued under that act, or national recreation areas designated
20 by an act of congress; or

21 (b) on any federal lands within national forests, subject to the exceptions and limitations of 30 CFR
22 761.11(b) and the procedures of 30 CFR 761.13.

23 (14) (a) A person who is listed by the department in the applicant violator system maintained by the
24 office of surface mining reclamation and enforcement of the U.S. department of the interior pursuant to the
25 Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201, et seq., as owning or controlling a strip-
26 mining or underground mining operation may challenge the ownership or control listing by filing a written
27 request with the department for review of the listing. In the request, the person must include a written
28 explanation of the basis for the challenge and any evidence the person wishes the department to consider. The

1 ~~department shall provide a written response within 60 days of receipt of the request for review.~~

2 ~~(b) Within 30 days of receipt of the response pursuant to subsection (14)(a), the person who is listed~~
3 ~~may request a hearing before the board department by submitting to the board department a written request for~~
4 ~~hearing that states the reason for the request. The contested case provisions of the Montana Administrative~~
5 ~~Procedure Act, Title 2, chapter 4, part 6, apply to the hearing."~~

6
7 **Section 90.** Section 82-4-231, MCA, is amended to read:

8 **"82-4-231. Submission of and action on reclamation plan.** (1) As rapidly, completely, and
9 effectively as the most modern technology and the most advanced state of the art will allow, each operator
10 granted a permit under this part shall reclaim and revegetate the land affected by the operation, except that
11 underground tunnels, shafts, or other subsurface excavations need not be revegetated. Under the provisions of
12 this part and rules adopted by the ~~board~~ department, an operator shall prepare and carry out a method of
13 operation, a plan of grading, backfilling, highwall reduction, subsidence stabilization, water control, and
14 topsoiling and a reclamation plan for the area of land affected by the operation. In developing a method of
15 operation and plans of grading, backfilling, highwall reduction, subsidence stabilization, water control,
16 topsoiling, and reclamation, all measures must be taken to eliminate damages to landowners and members of
17 the public, their real and personal property, public roads, streams, and all other public property from soil
18 erosion, subsidence, landslides, water pollution, and hazards dangerous to life and property.

19 (2) The reclamation plan must set forth in detail the manner in which the applicant intends to comply
20 with 82-4-232 through 82-4-234 and this section and the steps to be taken to comply with applicable air and
21 water quality laws and rules and any applicable health and safety standards.

22 (3) The application for a permit or major revision of a permit, which must contain the reclamation plan,
23 must be submitted to the department.

24 (4) The department shall determine whether the application is administratively complete. An
25 application is administratively complete if it contains information addressing each application requirement in 82-
26 4-222 and the rules implementing that section and all information necessary to initiate processing and public
27 review. The department shall notify the applicant in writing of its determination no later than 90 days after
28 submittal of the application. If the department determines that the application is not administratively complete, it

1 shall specify in the notice those items that the application must address. The application is presumed
2 administratively complete as to those requirements not specified in the notice.

3 (5) If the department determines that an environmental impact statement on the application is
4 required, it shall notify the applicant in writing at the same time it gives the applicant notice pursuant to
5 subsection (4).

6 (6) After the applicant receives notice that the application is administratively complete, the applicant
7 shall publish notice of filing of the application once a week for 4 consecutive weeks in a newspaper of general
8 circulation in the locality of the proposed operation. The department shall notify various local governmental
9 bodies, planning agencies, sewage and water treatment authorities, and water companies in the locality in
10 which the proposed mining will take place of the application and provide a reasonable time for them to submit
11 written comments. Any person having an interest that is or may be adversely affected or the officer or head of
12 any federal, state, or local governmental agency or authority may file written objections to the proposed initial or
13 revised application for permit or major revision within 30 days of the applicant's published notice. If written
14 objections are filed and an objector requests an informal conference, the department shall hold an informal
15 conference in the locality of the proposed operation within 30 days of receipt of the request. The department
16 shall notify the applicant and all parties to the informal conference of its decision and the reasons for its
17 decision within 60 days of the informal conference. The department may arrange with the applicant upon
18 request by any party to the administrative proceeding for access to the proposed mining area for the purpose of
19 gathering information relevant to the proceeding.

20 (7) The filing of written objections or a request for an informal conference may not preclude the
21 department from proceeding with its review of the application as specified in subsection (8).

22 (8) (a) The department shall review each administratively complete application and determine the
23 acceptability of the application. During the review, the department may propose modifications to the application
24 or delete areas from the application in accordance with the requirements of 82-4-227. A complete application is
25 considered acceptable when the application is in compliance with all of the applicable requirements of this part
26 and the regulatory program pursuant to this part.

27 (b) If the applicant significantly modifies the application after the application has been determined
28 administratively complete in accordance with subsection (4), the department shall under this section either deny

1 the application or conduct a new review, including an administrative completeness determination, public notice,
2 and objection period.

3 (c) If an environmental impact statement is determined to be necessary prior to making a permit
4 decision, the department shall complete and publish the final environmental impact statement at least 15 days
5 prior to the date of issuance of the written findings pursuant to subsection (8)(f).

6 (d) Except as provided in 75-1-205(4) and 75-1-208(4)(b), within 120 days after it determines that an
7 application is administratively complete, the department shall notify the applicant in writing whether the
8 application is or is not acceptable. If the application is not acceptable, the department shall set forth the reasons
9 why it is not acceptable, and it may propose modifications, delete areas, or reject the entire application. All
10 items not specified as unacceptable in the department's notification are presumed to be acceptable. Except as
11 provided in 75-1-208(4)(b), if the applicant revises the application in response to a notice of unacceptability, the
12 department shall review the revised application and notify the applicant in writing within 120 days of the date of
13 receipt whether the revised application is acceptable. If the revision constitutes a significant modification under
14 subsection (8)(b), the department shall conduct a new review, beginning with an administrative completeness
15 determination.

16 (e) When the application is determined to be acceptable, the department shall publish notice of its
17 determination once a week for 2 consecutive weeks in a newspaper of general circulation in the locality of the
18 proposed operation. Any person having an interest that is or may be adversely affected may file a written
19 objection to the determination within 10 days of the department's last published notice. If a written objection is
20 filed and an objector requests an informal conference, the department shall hold an informal conference in the
21 locality of the proposed operation within 20 days of receipt of the request. The department shall notify the
22 applicant and all parties to the informal conference of its decision and the reasons for the decision within 10
23 days of the informal conference.

24 (f) Except as provided in 75-1-205(4) and 75-1-208(4)(b), the department shall prepare written
25 findings granting or denying the permit or major revision application in whole or in part not later than 45 days
26 from the date the application is determined acceptable. However, if lands subject to the federal lands program
27 are included in the application for permit or major revision, the department shall prepare and submit written
28 findings to the federal regulatory authority. If the department's decision is to grant the permit, the department

1 shall issue the permit on the date of its written finding or, if any federal concurrence is necessary, on the date
2 when the concurrence is obtained. If the application is denied, specific reasons for the denial must be set forth
3 in the written notification to the applicant.

4 (g) If the department fails to act within the times specified in this subsection (8), it shall immediately
5 ~~notify the board record~~ NOTIFY THE BOARD in writing of its failure to comply and the reasons for the failure to
6 comply.

7 (9) The applicant, a landowner, or any person with an interest that is or may be adversely affected by
8 the department's permit decision may within 30 days of that decision submit a written notice requesting a
9 hearing. The notice must contain the grounds upon which the requester contends that the decision is in error.
10 The hearing must be started within 30 days of the request. For purposes of a hearing, the ~~board~~
11 ~~department~~ BOARD or its hearings officer may order site inspections of the area pertinent to the application. The
12 ~~board department~~ BOARD shall within 20 days of the hearing notify the person who requested the hearing, by
13 certified mail, and all other persons, by regular mail, of the findings and decisions. A person who presided at the
14 informal conference may not preside at the hearing or participate in the decision.

15 (10) In addition to the method of operation, grading, backfilling, highwall reduction, subsidence
16 stabilization, water control, topsoiling, and reclamation requirements of this part and rules adopted under this
17 part, the operator, consistent with the directives of subsection (1), shall:

18 (a) bury under adequate fill all toxic materials, shale, mineral, or any other material determined by the
19 department to be acid-producing, toxic, undesirable, or creating a hazard;

20 (b) as directed by rules, seal off tunnels, shafts, or other openings or any breakthrough of water
21 creating a hazard;

22 (c) impound, drain, or treat all runoff or underground mine waters so as to reduce soil erosion,
23 damage to grazing and agricultural lands, and pollution of surface and subsurface waters;

24 (d) remove or bury all metal, lumber, and other refuse resulting from the operation;

25 (e) use explosives in connection with the operation only in accordance with department regulations
26 designed to minimize noise, damage to adjacent lands, and water pollution and ensure public safety and for
27 other purposes;

28 (f) adopt measures to prevent land subsidence unless the department approves a plan for inducing

1 subsidence into an abandoned operation in a predictable and controlled manner, with measures for grading,
2 topsoiling, and revegetating the subsided land surface. In order for a controlled subsidence plan to be
3 approved, the applicant is required to show that subsidence will not cause a direct or indirect hazard to any
4 public or private buildings, roads, facilities, or use areas, constitute a hazard to human life or health or to
5 domestic livestock or a viable agricultural operation, or violate any other restrictions the department may
6 consider necessary.

7 (g) stockpile and protect from erosion all mining and processing wastes until these wastes can be
8 disposed of according to the provisions of this part;

9 (h) deposit as much stockpiled waste material as possible back into the mine voids upon
10 abandonment in a manner that will prevent or minimize land subsidence. The remaining waste material must be
11 disposed of as provided by this part and the rules of the ~~board~~ department.

12 (i) seal all portals, entryways, drifts, shafts, or other openings between the surface and underground
13 mine workings when no longer needed;

14 (j) to the extent possible using the best technology currently available, minimize disturbances and
15 adverse impacts of the operation on fish, wildlife, and related environmental values and achieve enhancement
16 of those resources when practicable;

17 (k) minimize the disturbances to the prevailing hydrologic balance at the mine site and in adjacent
18 areas and to the quality and quantity of water in surface water and ground water systems both during and after
19 strip- or underground-coal-mining operations and during reclamation by:

20 (i) avoiding acid or other toxic mine drainage by measures including but not limited to:

21 (A) preventing or removing water from contact with toxic-producing deposits;

22 (B) treating drainage to reduce toxic content that adversely affects downstream water upon being
23 released to watercourses;

24 (C) casing, sealing, or otherwise managing boreholes, shafts, and wells and keeping acid or other
25 toxic drainage from entering ground and surface waters;

26 (ii) (A) conducting strip- or underground-mining operations so as to prevent, to the extent possible
27 using the best technology currently available, additional contributions of suspended solids to streamflow or
28 runoff outside the permit area, but the contributions may not be in excess of requirements set by applicable

1 state or federal law;

2 (B) constructing any siltation structures pursuant to subsection (10)(k)(ii)(A) prior to commencement
3 of strip- or underground-mining operations, with the structures to be certified by a qualified registered engineer
4 and to be constructed as designed and as approved in the reclamation plan;

5 (iii) cleaning out and removing temporary or large settling ponds or other siltation structures from
6 drainways after disturbed areas are revegetated and stabilized and depositing the silt and debris at a site and in
7 a manner approved by the department;

8 (iv) restoring recharge capacity of the mined area to approximate premining conditions;

9 (v) avoiding channel deepening or enlargement in operations that requires the discharge of water
10 from mines;

11 (vi) preserving throughout the mining and reclamation process the essential hydrologic functions of
12 alluvial valley floors in the arid and semiarid areas of the country;

13 (vii) designing and constructing reclaimed channels of intermittent streams and perennial streams to
14 ensure long-term stability; and

15 (viii) any other actions that the department may prescribe;

16 (l) conduct strip- or underground-mine operations in accordance with the approved coal conservation
17 plan;

18 (m) stabilize and protect all surface areas, including spoil piles, to effectively control air pollution;

19 (n) seal all auger holes with an impervious and noncombustible material in order to prevent drainage
20 except when the department determines that the resulting impoundment of water in the auger holes may create
21 a hazard to the environment or the public health and safety;

22 (o) develop contingency plans to prevent sustained combustion;

23 (p) refrain from construction of roads or other access ways up a streambed or drainage channel or in
24 proximity to the channel so as to seriously alter the normal flow of water;

25 (q) meet other criteria that are necessary to achieve reclamation in accordance with the purposes of
26 this part, taking into consideration the physical, climatological, and other characteristics of the site;

27 (r) with regard to underground mines, eliminate fire hazards and otherwise eliminate conditions that
28 constitute a hazard to health and safety of the public;

(s) locate openings for all new drift mines working acid-producing or iron-producing coal seams in a manner that prevents a gravity discharge of water from the mine.

(11) An operator may not throw, dump, pile, or permit the throwing, dumping, or piling or otherwise placing of any overburden, stones, rocks, mineral, earth, soil, dirt, debris, trees, wood, logs, or any other materials or substances of any kind or nature beyond or outside of the area of land that is under permit and for which a bond has been posted under 82-4-223 or place the materials described in this section in a way that normal erosion or slides brought about by natural physical causes will permit the materials to go beyond or outside of that area of land. An operator shall conduct the strip- or underground-mining operation in a manner that protects areas outside the permit area."

Section 91. Section 82-4-232, MCA, is amended to read:

"82-4-232. Area mining required -- bond -- alternative plan. (1) (a) Area strip mining, a method of operation that does not produce a bench or fill bench, is required where strip mining is proposed. The area of land affected must be backfilled and graded to the approximate original contour of the land. However:

(i) consistent with the adjacent unmined landscape elements, the operator may propose and the department may approve regraded topography gentler than premining topography in order to enhance the postmining land use and develop a postmining landscape that will provide greater moisture retention, greater stability, and reduced soil losses from runoff and erosion;

(ii) postmining slopes may not exceed the angle of repose or lesser slope as is necessary to achieve a long-term static safety factor of 1.3 or greater and to prevent slides;

(iii) permanent impoundments may be approved if they are suitable for the postmining land use and otherwise meet the requirements of this part, as provided by ~~board~~ department rules; and

(iv) reclaimed topography must be suitable for the approved postmining land use.

(b) Spoil from the first cut is not required to be transported to the last cut if highwalls are eliminated, box cut spoils are graded to blend in with the surrounding terrain, and the approximate original contour of the land is achieved.

(c) When directed by the department, the operator shall construct in the final grading diversion ditches, depressions, or terraces that will accumulate or control the water runoff.

(2) In addition to the backfilling and grading requirements, the operator's method of operation on steep slopes may be regulated and controlled according to rules adopted by the ~~board~~ department. These rules may require any measure to accomplish the purpose of this part.

(3) For coal mining on prime farmlands, the ~~board~~ department shall establish by rule specifications for soil removal, storage, replacement, and reconstruction, and the operator must as a minimum be required to:

(a) (i) segregate the A horizon of the natural soil, except when it can be shown that other available soil materials will create a final soil having a greater productive capacity; and

(ii) if not used immediately, stockpile this material separately from other spoil and provide needed protection from wind and water erosion or contamination by other acid or toxic material;

(b) (i) segregate the B horizon of the natural soil, or underlying C horizon or other strata, or a combination of the horizons or other strata that are shown to be both texturally and chemically suitable for plant growth and that can be shown to be equally or more favorable for plant growth than the B horizon in sufficient quantities to create in the regraded final soil a root zone of comparable depth and quality to that that existed in the natural soil; and

(ii) if not used immediately, stockpile this material separately from other spoil and provide needed protection from wind and water erosion or contamination by acid or toxic material;

(c) replace and regrade the root zone material described in subsection (3)(b) with proper compaction and uniform depth over the regraded spoil material; and

(d) redistribute and grade in a uniform manner the surface soil horizon described in subsection (3)(a).

(4) All available topsoil must be removed in a separate layer, guarded from erosion and pollution, and kept in a condition so that it can sustain vegetation of at least the quality and variety it sustained prior to removal. However, the operator shall accord substantially the same treatment to any subsurface deposit of material that is capable, as determined by the department, of supporting surface vegetation virtually as well as the present topsoil. After the operation has been backfilled and graded, the topsoil or the best available subsurface deposit of material that is best able to support vegetation must be returned as the top layer.

(5) As determined by rules of the ~~board~~ department, time limits must be established requiring backfilling, grading, subsidence stabilization, water control, highwall reduction, topsoiling, planting, and revegetation to be kept current. All backfilling, subsidence stabilization, sealing, grading, and topsoiling must be

completed before necessary equipment is moved from the operation.

(6) (a) The permittee may file an application with the department for the release of all or part of a performance bond. The application must contain a proposed public notice of the precise location of the land affected, the number of acres for which bond release is sought, the permit and the date approved, the amount of the bond filed and the portion sought to be released, the type and appropriate dates of reclamation work performed, and a description of the results achieved as they relate to the permittee's approved reclamation plan. In addition, as part of any bond release application, the permittee shall submit copies of letters that the permittee has sent to adjoining property owners, local governmental bodies, planning agencies, and sewage and water treatment authorities or water companies in the locality of the operation, notifying them of the permittee's intention to seek release from the bond.

(b) The department shall determine whether the application is administratively complete. An application is administratively complete if it includes:

- (i) the location and acreage of the land for which bond release is sought;
- (ii) the amount of bond release sought;
- (iii) a description of the completed reclamation, including the date of performance;
- (iv) a discussion of how the results of the completed reclamation satisfy the requirements of the approved reclamation plan; and
- (v) information required by rules implementing this part.

(c) The department shall notify the applicant in writing of its determination no later than 60 days after submittal of the application. If the department determines that the application is not administratively complete, it shall specify in the notice those items that the application must address. After an application for bond release has been determined to be administratively complete by the department, the permittee shall publish a public notice that has been approved as to form and content by the department at least once a week for 4 successive weeks in a newspaper of general circulation in the locality of the mining operation.

(d) Any person with a valid legal interest that might be adversely affected by the release of a bond or the responsible officer or head of any federal, state, or local governmental agency that has jurisdiction by law or special expertise with respect to any environmental, social, or economic impact involved in the operation or is authorized to develop and enforce environmental standards with respect to the operation may file written

1 objections to the proposed release of bond to the department within 30 days after the last publication of the
2 notice. If written objections are filed and a hearing is requested, the department shall hold a public hearing in
3 the locality of the operation proposed for bond release or in Helena, at the option of the objector, within 30 days
4 of the request for hearing. The department shall inform the interested parties of the time and place of the
5 hearing. The date, time, and location of the public hearing must be advertised by the department in a
6 newspaper of general circulation in the locality for 2 consecutive weeks. Within 30 days after the hearing, the
7 department shall notify the permittee and the objector of its final decision.

8 (e) Without prejudice to the rights of the objector or the permittee or the responsibilities of the
9 department pursuant to this section, the department may establish an informal conference to resolve written
10 objections.

11 (f) For the purpose of the hearing under subsection (6)(d), the department may administer oaths,
12 subpoena witnesses or written or printed materials, compel the attendance of witnesses or the production of
13 materials, and take evidence, including but not limited to conducting inspections of the land affected and other
14 operations carried on by the permittee in the general vicinity. A verbatim record of each public hearing required
15 by this section must be made, and a transcript must be made available on the motion of any party or by order of
16 the department.

17 (g) If the applicant significantly modifies the application after the application has been determined to
18 be administratively complete, the department shall conduct a new review, including an administrative
19 completeness determination. A significant modification includes but is not limited to:

20 (i) the notification of an additional property owner, local governmental body, planning agency, or
21 sewage and water treatment authority of the permittee's intention to seek a bond release;

22 (ii) a material increase in the acreage for which a bond release is sought or in the amount of bond
23 release sought; or

24 (iii) a material change in the reclamation for which a bond release is sought or the information used to
25 evaluate the results of that reclamation.

26 (h) The department shall, within 30 days of determining that the application is administratively
27 complete or as soon as weather permits, conduct an inspection and evaluation of the reclamation work
28 involved. In the evaluation, the department shall consider, among other things, the degree of difficulty in

1 completing any remaining reclamation, whether pollution of surface and subsurface water is occurring, the
2 probability of continuance or future occurrence of the pollution, and the estimated cost of abating the pollution.

3 (i) The department shall review each administratively complete application to determine the
4 acceptability of the application. A complete application is acceptable if the application is in compliance with all
5 of the applicable requirements of this part, the rules adopted under this part, and the permit.

6 (j) (i) The department shall notify the applicant in writing regarding the acceptability of the application
7 no later than 60 days from the date of the inspection.

8 (ii) If the department determines that the application is not acceptable, it shall specify in the notice
9 those items that the application must address.

10 (iii) If the applicant revises the application in response to a notice of unacceptability, the department
11 shall review the revised application and notify the applicant in writing within 60 days of the date of receipt as to
12 whether the revised application is acceptable.

13 (iv) If the revision constitutes a significant modification, the department shall conduct a new review,
14 beginning with an administrative completeness determination.

15 (v) A significant modification includes but is not limited to:

16 (A) the notification of an additional property owner, local governmental body, planning agency, or
17 sewage and water treatment authority of the permittee's intention to seek a bond release;

18 (B) a material increase in the acreage for which a bond release is sought or the amount of bond
19 release sought; or

20 (C) a material change in the reclamation for which a bond release is sought or the information used to
21 evaluate the results of that reclamation.

22 (k) The department shall release the bond in whole or in part if it is satisfied the reclamation covered
23 by the bond or portion of the bond has been accomplished as required by this part according to the following
24 schedule:

25 (i) When the permittee completes the plugging, backfilling, regrading, and drainage control of a
26 bonded area in accordance with the approved reclamation plan, the department shall release 60% of the bond
27 or collateral for the applicable permit area.

28 (ii) After revegetation has been established on the regraded lands in accordance with the approved

1 reclamation plan, the department shall, for the period specified for operator responsibility of reestablishing
2 revegetation, retain that amount of bond for the revegetated area that would be sufficient for a third party to
3 cover the cost of reestablishing revegetation. Whenever a silt dam is to be retained as a permanent
4 impoundment, the portion of bond may be released under this subsection (6)(k)(ii) if provisions for sound future
5 maintenance by the operator or the landowner have been made with the department. Any part of the bond may
6 not be released under this subsection (6)(k)(ii):

7 (A) as long as the lands to which the release would be applicable are contributing suspended solids to
8 streamflow or runoff outside the permit area in excess of the requirements of 82-4-231(10)(k); or

9 (B) before soil productivity for prime farm lands to which the release would be applicable has returned
10 to equivalent levels of yield as nonmined land of the same soil type in the surrounding area under equivalent
11 management practices, as determined from the soil survey.

12 (iii) When the permittee has successfully completed all prospecting, mining, and reclamation activities,
13 the department shall release the remaining portion of the bond, but not before the expiration of the period
14 specified for responsibility and not until all reclamation requirements of this part are fully met.

15 (l) If the department disapproves the application for release of the bond or a portion of the bond, it
16 shall:

17 (i) provide to the permittee detailed written findings demonstrating that the reclamation covered by the
18 bond or a portion of the bond has not been accomplished as required by this part; and

19 (ii) recommend corrective actions necessary to secure the release and allowing opportunity for a public
20 hearing.

21 (m) When an application for total or partial bond release is filed with the department, it shall notify the
22 municipality or county in which a prospecting or mining operation is located by certified mail at least 30 days
23 prior to the release of all or a portion of the bond.

24 (7) All disturbed areas must be reclaimed in a timely manner to conditions that are capable of
25 supporting the land uses that they were capable of supporting prior to any mining or to higher or better uses as
26 approved pursuant to subsection (8).

27 (8) (a) An operator may propose a higher or better use as an alternative postmining land use. If the
28 landowner is not the operator, the operator shall submit written documentation of the concurrence of the

landowner or the land management agency with jurisdiction over the land. The department may approve the proposed alternative postmining land use only if it meets all of the following criteria:

(i) There is a reasonable likelihood for achievement of the alternative land use.

(ii) The alternative land use does not present any actual or probable hazard to the public health or safety or any threat of water diminution or pollution.

(iii) The alternative land use will not:

(A) be impractical or unreasonable;

(B) be inconsistent with applicable land use policies or plans;

(C) involve unreasonable delay in implementation; or

(D) cause or contribute to violation of federal, state, or local law.

(b) As used in this section, the term "landowner" includes a person who has sold the surface estate to the operator with an option to repurchase the surface estate after mining and reclamation are complete.

(9) The reclamation plan must incorporate appropriate wildlife habitat enhancement features that are integrated with cropland, grazing land, pastureland, land occasionally cut for hay, or other uses in order to enhance habitat diversity, with emphasis on big game animals, game birds, and threatened and endangered species that have been documented to live in the area of land affected, and to enhance wetlands and riparian areas along rivers and streams and bordering ponds and lakes. Incorporation of wildlife habitat enhancement features does not constitute a change in land use to fish and wildlife habitat and may not interfere with the designated land use.

(10) Facilities existing prior to mining, including but not limited to public roads, utility lines, railroads, or pipelines, may be replaced as part of the reclamation plan."

Section 92. Section 82-4-234, MCA, is amended to read:

"82-4-234. Commencement of reclamation. The operator shall commence the reclamation of the area of land affected by the operator's operation as soon as possible after the beginning of strip mining or underground mining of that area in accordance with plans previously approved by the department. Those grading, backfilling, subsidence stabilization, topsoiling, and water management practices that are approved in the plans must be kept current with the operation as defined by rules of the ~~board~~ department, and a permit or

1 supplement to a permit may not be issued if, in the discretion of the department, these practices are not
2 current."

3
4 **Section 93.** Section 82-4-235, MCA, is amended to read:

5 **"82-4-235. Determination of successful revegetation -- final bond release.** (1) Success of
6 revegetation must be judged on the effectiveness of the vegetation for the approved postmining land use, the
7 extent of cover compared to the cover occurring in the natural vegetation, and the requirements of 82-4-233.
8 Standards for success are:

9 (a) for areas reclaimed for use as cropland, crop production must be at least equal to that achieved
10 prior to mining based on comparison with historical data, comparable reference areas, or United States
11 department of agriculture publications applicable to the area of the operation, as referenced in rules adopted by
12 the ~~board~~ department;

13 (b) for areas reclaimed for use as pastureland or grazing land, the ground cover and production of
14 living plants on the revegetated area must be at least equal to that of a reference area or other standard
15 approved by the department as appropriate for the postmining land use;

16 (c) for areas reclaimed for use as fish and wildlife habitat, forestry, or recreation, success of
17 revegetation must be determined on the basis of approved tree density standards or shrub density standards,
18 or both, and vegetative ground cover required to achieve the postmining land use;

19 (d) reestablished vegetation is considered effective if the postmining land use is achieved and erosion
20 is controlled;

21 (e) reestablished vegetation is considered permanent if it is diverse and effective at the end of the 10-
22 year responsibility period specified under subsection (2); and

23 (f) plant species composing the reestablished vegetation are considered to have the same seasonal
24 characteristics of growth as the original vegetation, to be capable of regeneration and plant succession, and to
25 be compatible with the plant and animal species of the area if those plant species are native to the area or are
26 introduced species approved by the department as desirable and necessary to achieve the postmining land
27 use.

28 (2) Inspection and evaluation of reclaimed vegetative cover must be made as soon as possible

1 following an application for final bond release to determine if a satisfactory stand has been established. If the
2 department determines that a satisfactory vegetative cover has been established, it shall release the remaining
3 bond held on the area reclaimed after public notice and an opportunity for hearing as provided in 82-4-232(6).
4 Except as provided in subsection (3), the remaining bond may not be released prior to a period of 10 years after
5 the last year of augmented seeding, fertilizing, irrigation, or other work required under this part for those
6 operations or portions of operations that were seeded after May 2, 1978, or prior to a period of 5 years after
7 initial planting for all exploration activities and all other operations.

8 (3) (a) Vegetative cover of water management facilities and other support facilities composing no
9 more than 10% of the area for which bond release is sought is not subject to the 10-year responsibility period.
10 Water management facilities and other support facilities include sedimentation ponds, diversions, other water
11 management structures, soils stockpiles, and access roads.

12 (b) Vegetative cover of water management facilities and other support facilities composing no more
13 than 10% of the area for which bond release is sought is eligible for bond release if the vegetative cover
14 otherwise meets the reclamation standards in subsection (1).

15 (4) (a) Notwithstanding the provisions of subsections (2) and (3), on land from which coal was
16 removed prior to May 3, 1978, and on land from which coal was not removed and that was not used, disturbed,
17 or redisturbed in connection with this part after May 2, 1978, pursuant to a permit issued by the department
18 under this part, the department may approve for release a bond on an area of reclaimed vegetation that meets
19 the following criteria:

20 (i) it was seeded using a seed mixture that was approved by the department under the criteria
21 established pursuant to 82-4-233 and that included introduced species; and

22 (ii) at least one of the following conditions exists:

23 (A) the standards of 82-4-233(1) are otherwise achieved;

24 (B) the operator has demonstrated substantial usefulness of the reclaimed vegetation for grazing of
25 livestock;

26 (C) the operator demonstrates that the reclaimed vegetation has substantial value as a habitat
27 component for wildlife present in the area; or

28 (D) the topography and soils are suitable for conversion to cropland or hayland consistent with the

standards of 82-4-232 and the department approves and the operator completes that conversion.

(b) On lands that meet the criteria described in subsection (4)(a), interseeding or supplemental planting may be performed without reinitiating the liability period provided in subsection (2)."

Section 94. Section 82-4-239, MCA, is amended to read:

"82-4-239. Reclamation. (1) The department may have reclamation work done by its employees, by employees of other governmental agencies, by soil conservation districts, or through contracts with qualified persons. ~~The board~~ department may construct, operate, and maintain plants for the control and treatment of water pollution resulting from mine drainage.

(2) Any funds or any public works programs available to the department must be used and expended to reclaim and rehabilitate lands that have been subjected to strip mining or underground mining and that have not been reclaimed and rehabilitated in accordance with the standards of this part. The department shall cooperate with federal, state, and private agencies to engage in cooperative projects under this section.

(3) Agents, employees, or contractors of the department may enter upon any land for the purpose of conducting studies or exploratory work to determine whether the land has been strip- or underground-mined and not reclaimed and rehabilitated in accordance with the requirements of this part and to determine the feasibility of restoration, reclamation, abatement, control, or prevention of any adverse effects of past coal-mining practices. Upon request of the director of the department, the attorney general shall bring an injunctive action to restrain any interference with the exercise of the right to enter and inspect granted in this subsection. The action must be brought in the county in which the mine is located.

(4) (a) The department shall take the actions described in subsection (4)(b) when it makes a finding of fact that:

- (i) land or water resources have been adversely affected by past coal-mining practices;
- (ii) the adverse effects are at a stage at which, in the public interest, action to restore, reclaim, abate, control, or prevent should be taken; and
- (iii) the owners of the land or water resources where entry must be made to restore, reclaim, abate, control, or prevent the adverse effects of past coal-mining practices are not known or readily available or the owners will not give permission for the department or its agents, employees, or contractors to enter upon the

property to restore, reclaim, abate, control, or prevent the adverse effects of past coal-mining practices.

(b) After giving notice by mail to the owner, if known, and any purchaser under contract for deed, if known, or, if neither is known, by posting notice on the premises and advertising in a newspaper of general circulation in the county in which the land lies, the agents, employees, or contractors of the department may enter on the property adversely affected by past coal-mining practices and on any other property necessary for access to the mineral property to do all things necessary or expedient to restore, reclaim, abate, control, or prevent the adverse effects of past coal-mining practices.

(c) Action taken under subsection (4)(b) is not an act of condemnation of property or of trespass, but rather is an exercise of the power granted by Article IX, sections 1 and 2, of the Montana constitution.

(5) (a) Within 6 months after the completion of projects to restore, reclaim, abate, control, or prevent adverse effects of past coal-mining practices on privately owned land, the department shall itemize the money expended and may file a statement of those expenses in the office of the clerk and recorder of the county in which the land lies, together with a notarized appraisal by an independent appraiser of the value of the land before the restoration, reclamation, abatement, control, or prevention of adverse effects of past coal-mining practices if the money expended resulted in a significant increase in property value. The statement constitutes a lien upon the land. The lien may not exceed the amount determined by the appraisal to be the increase in the market value of the land as a result of the restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal-mining practices. A lien under this subsection (5)(a) may not be filed against the property of a person who owned the surface prior to May 2, 1977, and who did not consent to, participate in, or exercise control over the mining operation that necessitated the reclamation performed under this part.

(b) The landowner may petition within 60 days of the filing of the lien to determine the increase in the market value of the land as a result of the restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal-mining practices. The amount reported to be the increase in value of the premises constitutes the amount of the lien and must be recorded with the statement provided for in this section. Any party aggrieved by the decision may appeal as provided by law.

(c) The lien provided in this section must be recorded at the office of the county clerk and recorder. The statement constitutes a lien upon the land as of the date of the expenditure of the money and has priority as a lien second only to the lien of real estate taxes imposed upon the land.

(6) The department may acquire the necessary property by gift or purchase. A gift or purchase must be approved by the board of land commissioners. If the property cannot be acquired by gift or purchase at a reasonable cost, proceedings may be instituted in the manner provided in Title 70, chapter 30, against all nonaccepting landholders if:

(a) the property is necessary for successful reclamation;

(b) the acquired land after restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal-mining practices will serve recreation and historic purposes or conservation and reclamation purposes or provide open space benefits; and

(c) (i) permanent facilities, such as treatment plants or relocated stream channels, will be constructed on the land for the restoration, reclamation, abatement, control, or prevention of the adverse effects of past strip- or underground-coal-mining practices; or

(ii) acquisition of coal refuse disposal sites and all coal refuse on the land will serve the purposes of this part because public ownership is desirable to meet emergency situations and prevent recurrences of the adverse effects of past coal-mining practices."

Section 186. Section 82-4-251, MCA, is amended to read:

~~"82-4-251. Noncompliance—suspension of permits. (1) If it is determined on the basis of an inspection that the permittee is or that any condition or practice exists in violation of any requirement of this part or any permit condition required by this part that creates an imminent danger to the health or safety of the public or is causing or can reasonably be expected to cause significant and imminent environmental harm to land, air, or water resources, the director of the department or an authorized representative shall immediately order cessation of the operation or the portion of the operation relevant to the condition, practice, or violation. The cessation order remains in effect until the director or an authorized representative determines that the condition, practice, or violation has been abated or until modified, vacated, or terminated by the director or an authorized representative pursuant to subsection (5). If the director or an authorized representative finds that the ordered cessation of the operation or any portion of the operation will not completely abate the imminent danger to the health or safety of the public or the significant and imminent environmental harm to land, air, or water resources, the director or the authorized representative shall, in addition to the cessation order, impose~~

1 affirmative obligations requiring any steps that the director or the authorized representative considers
2 necessary to abate the imminent danger or the significant environmental harm.

3 ~~(2) When, on the basis of an inspection, the department determines that any permittee is in violation~~
4 ~~of any requirement of this part or any permit condition required by this part that does not create an imminent~~
5 ~~danger to the health or safety of the public or cannot be reasonably expected to cause significant and imminent~~
6 ~~environmental harm to land, air, or water resources, the director or an authorized representative shall issue a~~
7 ~~notice to the permittee or the permittee's agent fixing a reasonable time, not exceeding 90 days, for the~~
8 ~~abatement of the violation and providing opportunity for public hearing. If, upon expiration of the period of time~~
9 ~~as originally fixed or subsequently extended, for good cause shown and upon the written finding of the director~~
10 ~~or an authorized representative, the director or an authorized representative finds that the violation has not~~
11 ~~been abated, the director or an authorized representative shall immediately order a cessation of the operation~~
12 ~~or the portion of the operation relevant to the violation. The cessation order remains in effect until the director or~~
13 ~~an authorized representative determines that the violation has been abated or until modified, vacated, or~~
14 ~~terminated by the director or an authorized representative pursuant to subsection (5). In the order of cessation~~
15 ~~issued under this subsection, the director shall determine the steps necessary to abate the violation in the most~~
16 ~~expeditious manner possible and shall include the necessary measures in the order.~~

17 ~~(3) When, on the basis of an inspection, the director or an authorized representative determines that~~
18 ~~a pattern of violations of any requirements of this part or any permit conditions required by this part exists or~~
19 ~~has existed and if the director or an authorized representative also finds that the violations are caused by the~~
20 ~~unwarranted failure of the permittee to comply with any requirements of this part or any permit conditions or that~~
21 ~~the violations are willfully caused by the permittee, the director or an authorized representative shall issue an~~
22 ~~order to the permittee to show cause as to why the permit should not be suspended or revoked and shall~~
23 ~~provide opportunity for a public hearing. If a hearing is requested, the director shall inform all interested parties~~
24 ~~of the time and place of the hearing. Upon the permittee's failure to show cause as to why the permit should not~~
25 ~~be suspended or revoked, the director or an authorized representative shall suspend or revoke the permit. A~~
26 ~~permittee may request a contested case hearing on a permit suspension or revocation by filing a request for~~
27 ~~hearing, specifying the grounds for the request, within 30 days of receipt of the order of suspension or~~
28 ~~revocation. The order is effective upon expiration of the period for requesting a hearing or, if a hearing is~~

1 requested, upon issuance of a final order by the board ~~department~~. The hearing must be conducted in
2 accordance with the requirements of Title 2, chapter 4, part 6. When a permit has been revoked, the
3 department may order the performance bond forfeited.

4 (4) ~~Any additional permits held by an operator whose mining permit has been revoked must be~~
5 ~~suspended, and the operator is not eligible to receive another permit or to have the suspended permits~~
6 ~~reinstated until the operator has complied with all the requirements of this part with respect to former permits~~
7 ~~issued to the operator. An operator who has forfeited a bond is not eligible to receive another permit unless the~~
8 ~~land for which the bond was forfeited has been reclaimed without cost to the state or the operator has paid into~~
9 ~~the reclamation account a sum together with the value of the bond the department finds adequate to reclaim the~~
10 ~~lands.~~

11 (5) ~~Notices and orders issued pursuant to this section must set forth with reasonable specificity the~~
12 ~~nature of the violation and the remedial action required, the period of time established for abatement, and a~~
13 ~~reasonable description of the portion of the operation to which the notice or order applies. Each notice or order~~
14 ~~issued under this section must be given promptly to the permittee or the permittee's agent by the department,~~
15 ~~by the director, or by the authorized representative who issued the notice or order. All notices and orders must~~
16 ~~be in writing and be signed by the authorized representatives. Any notice or order issued pursuant to this~~
17 ~~section may be modified, vacated, or terminated by the director or an authorized representative. However, any~~
18 ~~notice or order issued pursuant to this section that requires cessation of mining by the operator expires within~~
19 ~~30 days of actual notice to the operator unless an informal public hearing, if requested by the person to whom~~
20 ~~the notice or order was issued, is held at the site or within such reasonable proximity to the site that any~~
21 ~~viewings of the site can be conducted during the course of the hearing. If the department receives a request for~~
22 ~~an informal public hearing 21 days after service of the notice or order, the period for holding the informal public~~
23 ~~hearing is extended by the number of days after the 21st day that the request was received.~~

24 (6) ~~A person who has been issued a notice or an order of cessation pursuant to subsection (1) or (2)~~
25 ~~or a person who has an interest that is or may be adversely affected by an order issued pursuant to subsection~~
26 ~~(1) or (2) or by modification, vacation, or termination of that order may request a hearing before the~~
27 ~~board~~department~~ on that order within 30 days of its issuance or within 30 days of its modification, vacation, or~~
28 ~~termination. The filing of an application for review under this subsection may not operate as a stay of any order~~

1 or notice. The board ~~department~~ shall make findings of fact and issue a written decision incorporating an order
2 ~~vacating, affirming, modifying, or terminating the order.~~

3 ~~(7) Whenever an order is issued under this section or as the result of any administrative proceeding~~
4 ~~under this part, at the request of any person, a sum equal to the aggregate amount of all costs, expenses, and~~
5 ~~attorney fees as determined by the department to have been reasonably incurred by the person for or in~~
6 ~~connection with the person's participation in the proceedings, including any judicial review of agency actions,~~
7 ~~may be assessed against either party as the court, resulting from judicial review, or the department, resulting~~
8 ~~from administrative proceedings, considers proper.~~

9 ~~(8) In order to protect the stability of the land, the director or an authorized representative shall order~~
10 ~~cessation of underground coal mining under urbanized areas, cities, towns, and communities and adjacent to~~
11 ~~industrial or commercial buildings, major impoundments, or permanent streams if the director or the authorized~~
12 ~~agent finds imminent danger to inhabitants of the urbanized areas, cities, towns, and communities."~~

13
14 **Section 95.** Section 82-4-254, MCA, is amended to read:

15 **"82-4-254. Violation -- penalty -- waiver.** (1) (a) Except as provided in subsection (2), a person or
16 operator who violates any of the provisions of this part, rules adopted or orders issued under this part, or term
17 or condition of a permit and any director, officer, or agent of a corporation who purposely or knowingly
18 authorizes, orders, or carries out a violation shall pay an administrative penalty of not less than \$100 or more
19 than \$5,000 for the violation and an additional administrative penalty of not less than \$100 or more than \$5,000
20 for each day during which a violation continues and may be enjoined from continuing the violations as provided
21 in this section. A person or operator who fails to correct a violation within the period permitted by law, rule ~~of the~~
22 ~~board~~, or order of the department must be assessed a penalty of not less than \$750 for each day, up to 30
23 days, during which the failure or violation continues.

24 (b) Penalties assessed under this section must be determined in accordance with the penalty factors
25 in 82-4-1001.

26 (c) The period permitted for correction of a violation does not, in the case of any review proceeding
27 under 82-4-251(6), end until entry of a final order suspending the abatement requirements or until entry of an
28 order of court ordering suspension of the abatement requirements. If the failure to abate continues for more

1 than 30 days, the department shall, within 30 days after the 30-day period, take appropriate action pursuant to
2 82-4-251(3) or request action under subsection (4) or (6) of this section.

3 (2) The department may waive the penalty for a minor violation of this part, a rule adopted or an order
4 issued under this part, or a term or condition of a permit if the department determines that the violation is not of
5 potential harm to public health, public safety, or the environment and does not impair the administration of this
6 part. The department may not waive a penalty assessed under this section if the person or operator fails to
7 abate the violation as directed under 82-4-251. The ~~board~~department shall adopt rules to implement and
8 administer a procedure for waiver of a penalty under this subsection.

9 (3) (a) To assess an administrative penalty under this section, the department shall issue a notice of
10 violation and penalty order to the person or operator, unless the penalty is waived pursuant to subsection (2).
11 The notice and order must specify the provision of this part, rule adopted or order issued under this part, or
12 term or condition of a permit that is violated and must contain findings of fact, conclusions of law, and a
13 statement of the proposed administrative penalty. The notice and order must be served personally or by
14 certified mail. Service by mail is complete 3 business days after the date of mailing. The notice and order
15 become final unless, within 30 days after the order is served, the person or operator to whom the order was
16 issued requests a hearing before the ~~board~~department BOARD. By submitting to the ~~board~~department BOARD a
17 written request within 30 days of service of the notice of violation, stating the reason for the request, the person
18 or operator is entitled to a hearing before the ~~board~~department BOARD under 82-4-206 on the issues of whether
19 the alleged violation has occurred and whether the penalty proposed to be assessed is proper. On receipt of a
20 request, the ~~board~~department BOARD shall schedule a hearing. After a hearing, the ~~board~~department BOARD
21 shall make findings of fact and issue a written decision as to the occurrence of the violation and the amount of
22 penalty warranted. If the ~~board~~department BOARD finds that the violation occurred and a penalty is warranted, it
23 shall order the payment of the penalty. If the time for requesting a hearing expires without a hearing request,
24 the person or operator shall remit the amount of the penalty within 30 days of the expiration of the period for
25 requesting a hearing.

26 (b) If the person or operator to whom a final order is issued under subsection (3)(a) wishes to obtain
27 judicial review of the order, the person or operator shall submit with any assessed penalty a statement that the
28 penalty is being paid under protest and the department shall hold the payment in escrow until judicial review is

complete. Any person or operator who fails to request and submit testimony at the hearing provided for in subsection (3)(a) or who fails to pay any assessed penalty under protest within 30 days of the order assessing the penalty forfeits the right to seek judicial review of the violation and penalty determinations.

(c) Penalties provided for in this section are recoverable in an action brought by the department. The action must be filed in the district court of the first judicial district, Lewis and Clark County, if mutually agreed on by the parties in the action, or in the district court having jurisdiction over the defendant.

(4) The department may bring an action for a restraining order or temporary or permanent injunction against an operator or other person who:

(a) violates, threatens to violate, or fails or refuses to comply with any order or decision issued under this part;

(b) interferes with, hinders, or delays the department in carrying out the provisions of this part;

(c) refuses to admit an authorized representative of the department to the permit area;

(d) refuses to permit inspection of the permit area by an authorized representative of the department;

(e) refuses to furnish any information or report requested by the department in furtherance of the provisions of this part; or

(f) refuses to permit access to and copying of records that the department determines to be necessary in carrying out the provisions of this part.

(5) Any relief granted by a court under subsection (4)(a) continues in effect until the completion or final termination of all proceedings for review of relief granted under this part unless, prior to the final determination, the district court granting the relief sets it aside or modifies it.

(6) A person who violates any of the provisions of this part or any determination or order issued under this part or who purposely or knowingly violates any permit condition issued under this part is guilty of a misdemeanor and shall be fined an amount not less than \$500 and not more than \$10,000 or be imprisoned for not more than 1 year, or both. Each day on which the violation occurs constitutes a separate offense.

(7) A person who knowingly makes any false statement, representation, or certification or knowingly fails to make any statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained pursuant to this part shall upon conviction be punished by a fine of not more than \$10,000 or by imprisonment for not more than 1 year, or both.

(8) A person who except as permitted by law purposely or knowingly resists, prevents, impedes, or interferes with the department or its agents in the performance of duties pursuant to this part shall be punished by a fine of not more than \$5,000 or by imprisonment for not more than 1 year, or both.

(9) An employee of the department performing any function or duty under this part may not have a direct or indirect financial interest in any strip- or underground-coal-mining operation. A person who knowingly violates the provisions of this subsection shall upon conviction be punished by a fine of not more than \$2,500 or by imprisonment of not more than 1 year, or both.

(10) Within 30 days after receipt of full payment of an administrative penalty assessed under this section, the department shall issue a written release of civil liability for the violations for which the penalty was assessed."

Section 188. Section 82-4-303, MCA, is amended to read:

"82-4-303. Definitions. As used in this part, unless the context indicates otherwise, the following definitions apply:

(1) "Abandonment of surface or underground mining" may be presumed when it is shown that continued operation will not resume.

(2) "Amendment" means a change to an approved operating or reclamation plan. A major amendment is an amendment that may significantly affect the human environment. A minor amendment is an amendment that will not significantly affect the human environment.

(3) "Board" means the board of environmental review provided for in 2-15-3502.

(4)(3) "Certification" means, with regard to tailings storage facilities, a statement of opinion by a professional engineer that the work on a tailings storage facility has been conducted in accordance with the normal standard of care within dam engineering practice. Certification does not constitute a warranty or guarantee of facts or conditions certified.

(5)(4) "Completeness" means that an application contains information addressing each applicable permit requirement as listed in this part or rules adopted pursuant to this part in sufficient detail for the department to make a decision as to adequacy of the application to meet the requirements of this part.

(6)(5) "Constructor" means the company or companies constructing the built components of a tailings

1 storage facility, including but not limited to embankment dams, surface water diversion structures, tailings
2 distribution systems, reclaim water systems, and monitoring instrumentation.

3 ~~(7)(6)~~ "Cyanide ore processing reagent" means cyanide or a cyanide compound used as a reagent in
4 leaching operations.

5 ~~(8)(7)~~ "Department" means the department of environmental quality provided for in 2-15-3501.

6 ~~(9)(8)~~ "Disturbed land" means the area of land or surface water that has been disturbed, beginning at
7 the date of the issuance of the permit. The term includes the area from which the overburden, tailings, waste
8 materials, or minerals have been removed and tailings ponds, waste dumps, roads, conveyor systems, load-out
9 facilities, leach dumps, and all similar excavations or coverings that result from the operation and that have not
10 been previously reclaimed under the reclamation plan.

11 ~~(10)(9)~~ "Engineer of record" means a qualified engineer who is the lead designer for a tailings storage
12 facility.

13 ~~(11)(10)~~ "Expansion" means, with regard to tailings storage facilities, a change in the size, height, or
14 configuration of or a contiguous addition to an existing tailings storage facility that increases or may increase
15 the storage capacity of the impoundment above the currently permitted capacity.

16 ~~(12)(11)~~ "Exploration" means:

17 ~~(a)~~ all activities that are conducted on or beneath the surface of lands and that result in material
18 disturbance of the surface for the purpose of determining the presence, location, extent, depth, grade, and
19 economic viability of mineralization in those lands, if any, other than mining for production and economic
20 exploitation; and

21 ~~(b)~~ all roads made for the purpose of facilitating exploration, except as noted in 82-4-310.

22 ~~(13)(12)~~ "Independent review engineer" means a licensed engineer who is a recognized expert in
23 tailings storage facility design, construction, operation, and closure.

24 ~~(14)(13)~~ "Material deviation" means a failure to follow a condition in a design document, corrective
25 action plan, schedule, or tailings operation, maintenance, and surveillance manual that could reasonably be
26 expected to substantively impair a tailings storage facility from performing as intended.

27 ~~(15)(14)~~ "Maximum credible earthquake" means the most severe earthquake that can be expected at
28 a site based on geologic and seismological evidence, including a review of all historic earthquake data of

1 events sufficiently nearby to influence the site, all faults in the area, and attenuations from causative faults to
2 the site.

3 ~~(16)(15)~~ "Mineral" means any ore, rock, or substance, other than oil, gas, bentonite, clay, coal, sand,
4 gravel, peat, soil materials, or uranium, that is taken from below the surface or from the surface of the earth for
5 the purpose of milling, concentration, refinement, smelting, manufacturing, or other subsequent use or
6 processing or for stockpiling for future use, refinement, or smelting.

7 ~~(17)(16)~~ "Mining" commences when the operator first mines ores or minerals in commercial quantities
8 for sale, beneficiation, refining, or other processing or disposition or first takes bulk samples for metallurgical
9 testing in excess of the aggregate of 10,000 short tons.

10 ~~(18)(17)~~ "Observational method" means a continuous, managed, and integrated process of design,
11 construction control, monitoring, and review enabling appropriate, previously defined modifications to be
12 incorporated during and after construction.

13 ~~(19)(18)~~ "Operator" means a person who has an operating permit issued under 82-4-335.

14 ~~(20)(19)~~ "Ore processing" means milling, heap leaching, flotation, vat leaching, or other standard
15 hard-rock mineral concentration processes.

16 ~~(21)(20)~~ "Panel" means the tailings storage facility independent review panel created for each new or
17 expanded tailings storage facility.

18 ~~(22)(21)~~ "Person" means any person, corporation, firm, association, partnership, or other legal entity
19 engaged in exploration for or mining of minerals on or below the surface of the earth, reprocessing of tailings or
20 waste materials, or operation of a hard-rock mill.

21 ~~(23)(22)~~ "Placer deposit" means:

22 ~~(a)~~ naturally occurring, scattered, or unconsolidated valuable minerals in gravel, glacial, eolian,
23 colluvial, or alluvial deposits lying above bedrock; or

24 ~~(b)~~ all forms of deposit except veins of quartz and other rock in place.

25 ~~(24)(23)~~ "Placer or dredge mining" means the mining of minerals from a placer deposit by a person or
26 persons.

27 ~~(25)(24)~~ "Practicable" means available and capable of being implemented after taking into
28 consideration cost, existing technology, and logistics in light of overall project purposes.

1 ~~(26)(25)~~ "Professional engineer" means a registered professional engineer licensed to practice in
2 Montana under Title 37, chapter 67, part 3.

3 ~~(27)(26)~~ "Qualified engineer" means a professional engineer who has a minimum of 10 years of direct
4 experience with the design and construction of tailings storage facilities and has the appropriate professional
5 and educational credentials to effectively determine appropriate parameters for the safe design, construction,
6 operation, and closure of a tailings storage facility.

7 ~~(28)(27)~~ "Reclamation plan" means the operator's written proposal, as required and approved by the
8 department, for reclamation of the land that will be disturbed. The proposal must include, to the extent practical
9 at the time of application for an operating permit:

10 ~~(a)~~ a statement of the proposed subsequent use of the land after reclamation, which may include use
11 of the land as an industrial site not necessarily related to mining;

12 ~~(b)~~ plans for surface gradient restoration to a surface suitable for the proposed subsequent use of the
13 land after reclamation is completed and the proposed method of accomplishment;

14 ~~(c)~~ the manner and type of revegetation or other surface treatment of disturbed areas;

15 ~~(d)~~ procedures proposed to avoid foreseeable situations of public nuisance, endangerment of public
16 safety, damage to human life or property, or unnecessary damage to flora and fauna in or adjacent to the area;

17 ~~(e)~~ the method of disposal of mining debris;

18 ~~(f)~~ the method of diverting surface waters around the disturbed areas when necessary to prevent
19 pollution of those waters or unnecessary erosion;

20 ~~(g)~~ the method of reclamation of stream channels and stream banks to control erosion, siltation, and
21 pollution;

22 ~~(h)~~ maps and other supporting documents that may be reasonably required by the department; and

23 ~~(i)~~ a time schedule for reclamation that meets the requirements of 82-4-336.

24 ~~(29)(28)~~ "Rock products" means decorative rock, building stone, riprap, mineral aggregates, and other
25 minerals produced by typical quarrying activities or collected from or just below the ground surface.

26 ~~(30)(29)~~ (a) "Small miner" means a person, firm, or corporation that engages in mining activity that is
27 not exempt from this part pursuant to 82-4-310, that engages in the business of reprocessing of tailings or
28 waste materials, that, except as provided in 82-4-310, knowingly allows other persons to engage in mining

activities on land owned or controlled by the person, firm, or corporation, that does not hold an operating permit under 82-4-335 except for a permit issued under 82-4-335(3) or a permit that meets the criteria of subsection (30)(c)(29)(c) of this section, and that conducts:

(i) an operation that results in not more than 5 acres of the earth's surface being disturbed and unreclaimed; or

(ii) two operations that disturb and leave unreclaimed less than 5 acres for each operation if the respective mining properties are:

(A) the only operations engaged in by the person, firm, or corporation; and

(B) at least 1 mile apart at their closest point.

(b) For the purpose of this definition only, the department shall, in computing the area covered by the operation:

(i) exclude access or haulage roads that are required by a local, state, or federal agency having jurisdiction over that road to be constructed to certain specifications if that public agency notifies the department in writing that it desires to have the road remain in use and will maintain it after mining ceases; and

(ii) exclude access roads for which the person, firm, or corporation submits a bond to the department in the amount of the estimated total cost of reclamation along with a description of the location of the road and the specifications to which it will be constructed.

(c) A small miner may hold an operating permit that allows disturbance of 100 acres or less. The permit may be amended to add new disturbance areas, but the total area permitted for disturbance may not exceed 100 acres at any time.

(31)(30) "Soil materials" means earth material found in the upper soil layers that will support plant growth.

(32)(31) (a) "Surface mining" means all or any part of the process involved in mining of minerals by removing the overburden and mining directly from the mineral deposits exposed, including but not limited to open-pit mining of minerals naturally exposed at the surface of the earth, mining by the auger method, and all similar methods by which earth or minerals exposed at the surface are removed in the course of mining.

(b) Surface mining does not include the extraction of oil, gas, bentonite, clay, coal, sand, gravel, peat, soil materials, or uranium or excavation or grading conducted for onsite farming, onsite road construction, or

1 other onsite building construction.

2 ~~(33)(32)~~ "Tailings" means the residual materials remaining after a milling process that separates the
3 valuable fraction from the uneconomic fraction of an ore mined by an operator.

4 ~~(34)(33)~~ (a) "Tailings storage facility" means a facility that temporarily or permanently stores tailings,
5 including the impoundment, embankment, tailings distribution works, reclaim water works, monitoring devices,
6 storm water diversions, and other ancillary structures.

7 ~~(b)~~ The term does not include a facility that:

8 ~~(i)~~ stores 50 acre feet or less of free water or process solution;

9 ~~(ii)~~ is wholly contained below surrounding grade with no man-made structures retaining tailings, water,
10 or process solution or underground mines that use tailings as backfill; or

11 ~~(iii)~~ stores dry stack or filtered tailings.

12 ~~(35)(34)~~ "Underground mining" means all methods of mining other than surface mining.

13 ~~(36)(35)~~ "Unit of surface-mined area" means that area of land and surface water included within an
14 operating permit actually disturbed by surface mining during each 12-month period of time, beginning at the
15 date of the issuance of the permit. The term includes the area from which overburden or minerals have been
16 removed, the area covered by mining debris, and all additional areas used in surface mining or underground
17 mining operations that by virtue of mining use are susceptible to erosion in excess of the surrounding
18 undisturbed portions of land.

19 ~~(37)(36)~~ "Vegetative cover" means the type of vegetation, grass, shrubs, trees, or any other form of
20 natural cover considered suitable at time of reclamation."

21

22 **Section 96.** Section 82-4-304, MCA, is amended to read:

23 **"82-4-304. Exemption -- works performed prior to promulgation of rules.** This part is not
24 applicable to any exploration or mining work performed prior to the date of promulgation of the ~~board's initial~~
25 rules pursuant to 82-4-321 relating to exploration and mining. This part is not applicable to the reprocessing of
26 tailings or waste rock that occurred prior to the date of promulgation of the ~~board's initial~~ rules regarding those
27 activities. If, after the date of promulgation of initial rules applicable to mills not located at a mine site, work is
28 performed at a mill that does not use cyanide ore-processing reagent and that was constructed and operated

1 before promulgation of those rules, this part applies only to the areas initially disturbed after promulgation of
2 those rules."

3
4 **Section 190.** Section 82-4-305, MCA, is amended to read:

5 ~~"82-4-305. Exemption -- small miners -- written agreement. (1) Except as provided in subsections~~
6 ~~(3) through (11), the provisions of this part do not apply to a small miner if the small miner annually agrees in~~
7 ~~writing:~~

8 ~~(a) that the small miner will not pollute or contaminate any stream;~~

9 ~~(b) that the small miner will provide protection for human and animal life through the installation of~~
10 ~~bulkheads installed over safety collars and the installation of doors on tunnel portals;~~

11 ~~(c) that the small miner will provide a map locating the miner's mining operations. The map must be of~~
12 ~~a size and scale determined by the department.~~

13 ~~(d) if the small miner's operations are placer or dredge mining, that the small miner shall salvage and~~
14 ~~protect all soil materials for use in reclamation of that site and shall reclaim all land disturbed by the operations~~
15 ~~to comparable utility and stability as that of adjacent areas.~~

16 ~~(2) For small miner exemptions obtained after September 30, 1985, a small miner may not obtain or~~
17 ~~continue an exemption under subsection (1) unless the small miner annually certifies in writing:~~

18 ~~(a) if the small miner is an individual, that:~~

19 ~~(i) no business association or partnership of which the small miner is a member or partner has a~~
20 ~~small miner exemption; and~~

21 ~~(ii) no corporation of which the small miner is an officer, director, or owner of record of 25% or more of~~
22 ~~any class of voting stock has a small miner exemption; or~~

23 ~~(b) if the small miner is a partnership or business association, that:~~

24 ~~(i) none of the associates or partners holds a small miner exemption; and~~

25 ~~(ii) none of the associates or partners is an officer, director, or owner of 25% or more of any class of~~
26 ~~voting stock of a corporation that has a small miner exemption; or~~

27 ~~(c) if the small miner is a corporation, that no officer, director, or owner of record of 25% or more of~~
28 ~~any class of voting stock of the corporation:~~

1 ~~(i) holds a small-miner exemption;~~

2 ~~(ii) is a member or partner in a business association or partnership that holds a small-miner exemption;~~

3 ~~(iii) is an officer, director, or owner of record of 25% or more of any class of voting stock of another~~
4 ~~corporation that holds a small-miner exemption.~~

5 ~~(3) A small miner whose operations are placer or dredge mining shall post a performance bond equal~~
6 ~~to the state's documented cost estimate of reclaiming the disturbed land, although the bond may not exceed~~
7 ~~\$10,000 for each operation. If the small miner has posted a bond for reclamation with another government~~
8 ~~agency, the small miner is exempt from the requirement of this subsection.~~

9 ~~(4) If a small miner who conducts a placer or dredge mining operation fails to reclaim the operation,~~
10 ~~the small miner is liable to the department for all its reasonable costs of reclamation, including a reasonable~~
11 ~~charge for services performed by state personnel and for state materials and equipment used. If the small~~
12 ~~miner posts a surety bond, the surety is liable to the state to the extent of the bond amount and the small miner~~
13 ~~is liable for the remainder of the reasonable costs to the state of reclaiming the operation.~~

14 ~~(5) If a small miner who conducts a placer or dredge mining operation fails to commence reclamation~~
15 ~~of the operation within 6 months after cessation of mining or within an extended period allowed by the~~
16 ~~department for good cause shown or if the small miner fails to diligently complete reclamation, the department~~
17 ~~shall notify the small miner by certified mail that it intends to reclaim the operation unless the small miner~~
18 ~~commences reclamation within 30 days and diligently completes the reclamation. The notice must be mailed to~~
19 ~~the address stated on the small miner exclusion statement or, if the small miner has notified the department of~~
20 ~~a different address by letter or in the annual certification form, to the most recent address given to the~~
21 ~~department. If the small miner fails to commence reclamation within 30 days or to diligently complete~~
22 ~~reclamation, the department may revoke the small miner exclusion statement, forfeit any bond that has been~~
23 ~~posted with the department, and enter and reclaim the operation. If the small miner has not posted a bond with~~
24 ~~the department or if the reasonable costs of reclamation exceed the amount of the bond, the department may~~
25 ~~also collect additional reclamation costs, as set forth in subsection (6), before or after it incurs those costs.~~

26 ~~(6) To collect additional reclamation costs, the department shall notify the small miner by certified~~
27 ~~mail, at the address determined under subsection (5), of the additional reasonable reclamation costs and~~
28 ~~request payment within 30 days. If the small miner does not pay the additional reclamation costs within 30~~

1 days, the department may bring an action in district court for payment of the estimated future costs and, if the
2 department has performed any reclamation, of its reasonable actual costs. The court shall order payment of
3 costs that it determines to be reasonable and shall retain jurisdiction until reclamation of the operation is
4 completed. Upon completion of reclamation, the court shall order payment of any additional costs that it
5 considers reasonable or the refund of any portion of any payment for estimated costs that exceeds the actual
6 reasonable costs incurred by the department.

7 (7) ~~A small miner who intends to use a cyanide ore processing reagent or other metal leaching~~
8 ~~solvents or reagents shall obtain an operating permit for that part of the small miner's operation in which the~~
9 ~~cyanide ore processing reagent or other metal leaching solvents or reagents will be used or disposed of. The~~
10 ~~acreage disturbed by the operation using cyanide ore processing reagents or other metal leaching solvents or~~
11 ~~reagents and covered by the operating permit is excluded from the 5-acre limit specified in 82-4-303(30)(a)(i)~~
12 ~~and (30)(a)(ii) 82-4-303(29)(a)(i) and (29)(a)(ii).~~

13 (8) (a) ~~Except for a small miner proposing to conduct a placer or dredge mining operation, a small~~
14 ~~miner who intends to use an impoundment to store waste from ore processing shall obtain approval for the~~
15 ~~design, construction, operation, and reclamation of that impoundment and post a performance bond for that~~
16 ~~part of the small miner's operation before constructing an impoundment. The small miner shall post a~~
17 ~~performance bond equal to the state's documented cost estimate of reclaiming the disturbed land. If the small~~
18 ~~miner has posted a bond for reclamation of that site with a federal government agency, the small miner is~~
19 ~~exempt from the requirements of this subsection (8)(a).~~

20 (b) ~~The department shall conduct a review of the adequacy of the bond posted by a small miner~~
21 ~~using an impoundment pursuant to this section at least once every 5 years and adjust the bond if necessary to~~
22 ~~ensure reclamation of the impoundment. The acreage disturbed by the portion of the operation that uses an~~
23 ~~impoundment to store waste from ore processing is included in the 5-acre limit specified in 82-4-303(30)(a)(i)~~
24 ~~and (30)(a)(ii) 82-4-303(29)(a)(i) and (29)(a)(ii) and is subject to the provisions of this subsection (8).~~

25 (c) ~~If a small miner under this subsection (8) fails to reclaim the operation, the small miner is liable to~~
26 ~~the department for all its reasonable costs of reclamation, including a reasonable charge for services performed~~
27 ~~by state personnel and for state materials and equipment used. If the small miner posts a surety bond, the~~
28 ~~surety is liable to the state to the extent of the bond amount and the small miner is liable for the remainder of~~

1 ~~the reasonable costs to the state of reclaiming the operation.~~

2 ~~(d) If a small miner under this subsection (8) fails to commence reclamation of the operation within 6~~
3 ~~months after cessation of mining or within an extended period allowed by the department for good cause shown~~
4 ~~or if the small miner fails to diligently complete reclamation, the department shall notify the small miner by~~
5 ~~certified mail that it intends to reclaim the operation unless the small miner commences reclamation within 30~~
6 ~~days and diligently completes the reclamation. The notice must be mailed to the address stated on the small~~
7 ~~miner exclusion statement or, if the small miner has notified the department of a different address by letter or in~~
8 ~~the annual certification form, to the most recent address given to the department. If the small miner fails to~~
9 ~~commence reclamation within 30 days or to diligently complete reclamation, the department may revoke the~~
10 ~~small miner exclusion statement, forfeit any bond that has been posted with the department, and enter and~~
11 ~~reclaim the operation. If the small miner has not posted a bond with the department or if the reasonable costs of~~
12 ~~reclamation exceed the amount of the bond, the department may also collect additional reclamation costs, as~~
13 ~~set forth in subsection (8)(e), before or after it incurs those costs.~~

14 ~~(e) To collect additional reclamation costs, the department shall notify the small miner by certified~~
15 ~~mail, at the address determined under subsection (8)(d), of the additional reasonable reclamation costs and~~
16 ~~request payment within 30 days. If the small miner does not pay the additional reclamation costs within 30~~
17 ~~days, the department may bring an action in district court for payment of the estimated future costs and, if the~~
18 ~~department has performed any reclamation, of its reasonable actual costs. The court shall order payment of~~
19 ~~costs that it determines to be reasonable and shall retain jurisdiction until reclamation of the operation is~~
20 ~~completed. Upon completion of reclamation, the court shall order payment of any additional costs that it~~
21 ~~considers reasonable or the refund of any portion of any payment for estimated costs that exceeds the actual~~
22 ~~reasonable costs incurred by the department.~~

23 ~~(f) Except for a small miner who conducts a placer or dredge mining operation, a small miner utilizing~~
24 ~~an impoundment to store waste from ore processing on or after April 28, 2005, shall obtain approval of the~~
25 ~~design, construction, operation, and reclamation of that impoundment and post a performance bond within 6~~
26 ~~months of April 28, 2005. If the small miner has posted a bond for reclamation of that site with a federal~~
27 ~~government agency, the small miner is exempt from the requirements of this subsection (8)(f).~~

28 ~~(9) The exemption provided in this section does not apply to a person:~~

(a) ~~whose failure to comply with the provisions of this part, the rules adopted under this part, or a permit or license issued under this part has resulted in the forfeiture of a bond, unless that person meets the conditions described under 82-4-360;~~

(b) ~~who has not paid a penalty for which the department has obtained a judgment pursuant to 82-4-361;~~

(c) ~~who has failed to post a reclamation bond required by this section, unless the department has certified that the area for which the bond should have been posted has been reclaimed by that person or reclaimed by the department and the person has reimbursed the department for the cost of the reclamation; or~~

(d) ~~who has failed to comply with an abatement order issued pursuant to 82-4-362, unless the department has completed the abatement and the person has reimbursed the department for the cost of abatement.~~

~~(10) The exemption provided in this section does not apply to an area:~~

~~(a) under permit pursuant to 82-4-335;~~

~~(b) that has been permitted pursuant to 82-4-335 and reclaimed by the permittee, the department, or any other state or federal agency; or~~

~~(c) that has been reclaimed by or has been subject to remediation of contamination or pollution by a public agency, under supervision of a public agency, or using public funds.~~

~~(11) A small miner may not use mercury except in a contained facility that prevents the escape of any mercury into the environment."~~

Section 97. Section 82-4-309, MCA, is amended to read:

"82-4-309. Exemption -- operations on federal lands. This part ~~shall not be applicable~~ does not apply to operations on certain federal lands as specified by the ~~board~~ department, provided it is first determined by the ~~board~~ department that federal law or regulations issued by the federal agency administering such land impose controls for reclamation of said lands substantially equal to or greater than those imposed by this part."

Section 98. Section 82-4-321, MCA, is amended to read:

"82-4-321. Administration. The department is charged with the responsibility of administering this

1 ~~part. In order to implement its terms and provisions, the board shall from time to time promulgate such and~~
2 ~~adopting~~ rules as ~~the board shall deem~~ necessary. The department shall employ experienced, qualified persons
3 in the field of mined-land reclamation who, for the purpose of this part, are referred to as supervisors."
4

5 **Section 99.** Section 82-4-332, MCA, is amended to read:

6 **"82-4-332. Exploration license.** (1) An exploration license must be issued to any applicant who:

7 (a) pays a fee of \$100 to the department;

8 (b) agrees to reclaim any surface area damaged by the applicant during exploration operations, as
9 may be reasonably required by the department;

10 (c) is not in default of any other reclamation obligation under this law.

11 (2) An application for an exploration license must be made in writing, notarized, and submitted to the
12 department in duplicate upon forms prepared and furnished by it. The application must include an exploration
13 map or sketch in sufficient detail to locate the area to be explored and to determine whether significant
14 environmental problems would be encountered. ~~The board~~department shall by rule determine the precise
15 nature of the exploration map or sketch. The applicant shall state what type of prospecting and excavation
16 techniques will be employed in disturbing the land.

17 (3) Prior to the issuance of an exploration license, the applicant shall file with the department a
18 reclamation and revegetation bond in a form and amount as determined by the department in accordance with
19 82-4-338.

20 (4) In the event that the holder of an exploration license desires to mine the area covered by the
21 exploration license and has fulfilled all of the requirements for an operating permit, the department shall allow
22 the postponement of the reclamation of the acreage explored if that acreage is incorporated into the complete
23 reclamation plan submitted with the application for an operating permit. Any land actually affected by
24 exploration or excavation under an exploration license and not covered by the operating reclamation plan must
25 be reclaimed within 2 years after the completion of exploration or abandonment of the site in a manner
26 acceptable to the department."
27

28 **Section 100.** Section 82-4-335, MCA, is amended to read:

1 **"82-4-335. Operating permit -- limitation -- fees.** (1) A person may not engage in mining, ore
2 processing, or reprocessing of tailings or waste material, construct or operate a hard-rock mill, use cyanide ore-
3 processing reagents or other metal leaching solvents or reagents, or disturb land in anticipation of those
4 activities in the state without first obtaining a final operating permit from the department. Except as provided in
5 subsection (2), a separate final operating permit is required for each complex.

6 (2) (a) A person who engages in the mining of rock products or a landowner who allows another
7 person to engage in the mining of rock products from the landowner's land may obtain an operating permit for
8 multiple sites if each of the multiple sites does not:

9 (i) operate within 100 feet of surface water or in ground water or impact any wetland, surface water, or
10 ground water;

11 (ii) have any water impounding structures other than for storm water control;

12 (iii) have the potential to produce acid, toxic, or otherwise pollutive solutions;

13 (iv) adversely impact a member of or the critical habitat of a member of a wildlife species that is listed
14 as threatened or endangered under the Endangered Species Act of 1973; or

15 (v) impact significant historic or archaeological features.

16 (b) A landowner who is a permittee and who allows another person to mine on the landowner's land
17 remains responsible for compliance with this part, the rules adopted pursuant to this part, and the permit for all
18 mining activities conducted on sites permitted pursuant to this subsection (2) with the landowner's permission.
19 The performance bond required under this part is and must be conditioned upon compliance with this part, the
20 rules adopted pursuant to this part, and the permit of the landowner and any person who mines with the
21 landowner's consent.

22 (3) A small miner who intends to use a cyanide ore-processing reagent or other metal leaching
23 solvents or reagents shall obtain an operating permit for that part of the small miner's operation where the
24 cyanide ore-processing reagent or other metal leaching solvents or reagents will be used or disposed of.

25 (4) (a) Prior to receiving an operating permit from the department, a person shall pay the basic permit
26 fee of \$500. The department may require a person who is applying for a permit pursuant to subsection (1) to
27 pay an additional fee not to exceed the actual amount of contractor and employee expenses beyond the normal
28 operating expenses of the department whenever those expenses are reasonably necessary to provide for

1 timely and adequate review of the application, including any environmental review conducted under Title 75,
2 chapter 1, parts 1 and 2. The ~~board~~ department may further define these expenses by rule. Whenever the
3 department determines that an additional fee is necessary and the additional fee will exceed \$5,000, the
4 department shall notify the applicant that a fee must be paid and submit to the applicant an itemized estimate of
5 the proposed expenses. The department shall provide the applicant an opportunity to review the department's
6 estimated expenses. The applicant may indicate which proposed expenses the applicant considers duplicative
7 or excessive, if any.

8 (b) (i) Subject to subsection (4)(b)(ii), a contractor shall, at the request of the applicant, directly
9 submit invoices of contractor expenses to the applicant.

10 (ii) A contractor's work is assigned, reviewed, accepted, or rejected by the department pursuant to this
11 section.

12 (5) The person shall submit an application on a form provided by the department, which must contain
13 the following information and any other pertinent data required by rule:

14 (a) the name and address of the operator, the engineer of record if applicable, and, if a corporation or
15 other business entity, the name and address of its officers, directors, owners of 10% or more of any class of
16 voting stock, partners, and the like and its resident agent for service of process, if required by law;

17 (b) the minerals expected to be mined;

18 (c) a proposed reclamation plan;

19 (d) the expected starting date of operations;

20 (e) a map showing the specific area to be mined and the boundaries of the land that will be disturbed,
21 the topographic detail, the location and names of all streams, roads, railroads, and utility lines on or
22 immediately adjacent to the area, and the location of proposed access roads to be built;

23 (f) the names and addresses of the owners of record and any purchasers under contracts for deed of
24 the surface of the land within the permit area and the owners of record and any purchasers under contracts for
25 deed of all surface area within one-half mile of any part of the permit area, provided that the department is not
26 required to verify this information;

27 (g) the names and addresses of the present owners of record and any purchasers under contracts for
28 deed of all minerals in the land within the permit area, provided that the department is not required to verify this

1 information;

2 (h) the source of the applicant's legal right to mine the mineral on the land affected by the permit,
3 provided that the department is not required to verify this information;

4 (i) the types of access roads to be built and manner of reclamation of road sites on abandonment;

5 (j) a plan that will provide, within limits of normal operating procedures of the industry, for completion
6 of the operation;

7 (k) ground water and surface water hydrologic data gathered from a sufficient number of sources and
8 length of time to characterize the hydrologic regime;

9 (l) a plan detailing the design, operation, and monitoring of impounding structures, including but not
10 limited to tailings impoundments and water reservoirs, sufficient to ensure that the structures are safe and
11 stable. For a tailings storage facility, this requirement is met by submission of a design document pursuant to
12 82-4-376, a panel report pursuant to 82-4-377, and a tailings operation, maintenance, and surveillance manual
13 pursuant to 82-4-379 prior to issuance of a draft permit.

14 (m) a plan identifying methods to be used to monitor for the accidental discharge of objectionable
15 materials and remedial action plans to be used to control and mitigate discharges to surface or ground water;

16 (n) an evaluation of the expected life of any tailings impoundment or waste area and the potential for
17 expansion of the tailings impoundment or waste site. For a tailings storage facility, this requirement is met by
18 submission of a design document pursuant to 82-4-376, a panel report pursuant to 82-4-377, and a tailings
19 operation, maintenance, and surveillance manual pursuant to 82-4-379 prior to issuance of a draft permit.

20 (o) an assessment of the potential for the postmining use of mine-related facilities for other industrial
21 purposes, including evidence of consultation with the county commission of the county or counties where the
22 mine or mine-related facilities will be located.

23 (6) Except as provided in subsection (8), the permit provided for in subsection (1) for a large-scale
24 mineral development, as defined in 90-6-302, must be conditioned to provide that activities under the permit
25 may not commence until the impact plan is approved under 90-6-307 and until the permittee has provided a
26 written guarantee to the department and to the hard-rock mining impact board of compliance within the time
27 schedule with the commitment made in the approved impact plan, as provided in 90-6-307. If the permittee
28 does not comply with that commitment within the time scheduled, the department, upon receipt of written notice

1 from the hard-rock mining impact board, shall suspend the permit until it receives written notice from the hard-
2 rock mining impact board that the permittee is in compliance.

3 (7) When the department determines that a permittee has become or will become a large-scale
4 mineral developer pursuant to 82-4-339 and 90-6-302 and provides notice as required under 82-4-339, within 6
5 months of receiving the notice, the permittee shall provide the department with proof that the permittee has
6 obtained a waiver of the impact plan requirement from the hard-rock mining impact board or that the permittee
7 has filed an impact plan with the hard-rock mining impact board and the appropriate county or counties. If the
8 permittee does not file the required proof or if the hard-rock mining impact board certifies to the department that
9 the permittee has failed to comply with the hard-rock mining impact review and implementation requirements in
10 Title 90, chapter 6, parts 3 and 4, the department shall suspend the permit until the permittee files the required
11 proof or until the hard-rock mining impact board certifies that the permittee has complied with the hard-rock
12 mining impact review and implementation requirements.

13 (8) Compliance with 90-6-307 is not required for exploration and bulk sampling for metallurgical
14 testing when the aggregate samples are less than 10,000 tons.

15 (9) A person may not be issued an operating permit if:

16 (a) that person's failure, or the failure of any firm or business association of which that person was a
17 principal or controlling member, to comply with the provisions of this part, the rules adopted under this part, or a
18 permit or license issued under this part has resulted in either the receipt of bond proceeds by the department or
19 the completion of reclamation by the person's surety or by the department, unless that person meets the
20 conditions described in 82-4-360;

21 (b) that person has not paid a penalty for which the department has obtained a judgment pursuant to
22 82-4-361;

23 (c) that person has failed to post a reclamation bond required by 82-4-305; or

24 (d) that person has failed to comply with an abatement order issued pursuant to 82-4-362, unless the
25 department has completed the abatement and the person has reimbursed the department for the cost of
26 abatement.

27 (10) A person may not be issued a permit under this part unless, at the time of submission of a bond,
28 the person provides the current information required in subsection (5)(a) and:

(a) (i) certifies that the person is not currently in violation in this state of any law, rule, or regulation of this state or of the United States pertaining to air quality, water quality, or mined land reclamation; or

(ii) presents a certification by the administering agency that the violation is in the process of being corrected to the agency's satisfaction or is the subject of a bona fide administrative or judicial appeal; and

(b) if the person is a partnership, corporation, or other business association, provides the certification required by subsection (10)(a)(i) or (10)(a)(ii), as applicable, for any partners, officers, directors, owners of 10% or more of any class of voting stock, and business association members."

Section 101. Section 82-4-338, MCA, is amended to read:

"82-4-338. Performance bond. (1) (a) An applicant for an exploration license or operating permit shall file with the department a bond payable to the state of Montana with surety satisfactory to the department in the sum to be determined by the department of not less than \$200 for each acre or fraction of an acre of the disturbed land, conditioned upon the faithful performance of the requirements of this part, the rules of the ~~board~~ department, and the permit. In lieu of a bond, the applicant may file with the department a cash deposit, an assignment of a certificate of deposit, an irrevocable letter of credit, or other surety acceptable to the department. The bond may not be less than the estimated cost to the state to ensure compliance with Title 75, chapters 2 and 5, this part, the rules, and the permit, including the potential cost of department management, operation, and maintenance of the site upon temporary or permanent operator insolvency or abandonment, [during a suspension authorized pursuant to 82-4-341(8)(b)(ii) or] until full bond liquidation can be effected.

(b) A public or governmental agency may not be required to post a bond under the provisions of this part.

(c) A blanket performance bond covering two or more operations may be accepted by the department. A blanket bond must adequately secure the estimated total number of acres of disturbed land.

(d) (i) For an exploration license or operating permit authorizing activities on federal land within the state, the department may accept a bond payable to the state of Montana and the federal agency administering the land. The bond must provide at least the same amount of financial guarantee as required by this part.

(ii) The bond must provide that the department may forfeit the bond without the concurrence of the federal land management agency. The bond may provide that the federal land management agency may forfeit

1 the bond without the concurrence of the department. Upon forfeiture by either agency, the bond must be
2 payable to the department and may also be payable to the federal land management agency. If the bond is
3 payable to the department and the federal land management agency, the department, before accepting the
4 bond, shall enter into an agreement or memorandum of understanding with the federal land management
5 agency providing for administration of the bond funds in a manner that will allow the department to provide for
6 compliance with the requirements of this part, the rules adopted under this part, and the permit.

7 (iii) The department may not enter into an agreement or memorandum of understanding with a federal
8 land management agency that would require the department to impose requirements on an operator that are
9 more stringent than state law and rules.

10 (2) (a) The department may calculate one or more reclamation plan components within its jurisdiction
11 with the assistance of one or more third-party contractors selected jointly by the department and the applicant
12 and compensated by the applicant when, based on relevant past experience, the department determines that
13 additional expertise is necessary to calculate the bond amount for reclamation plan components. The
14 department may contract for assistance pursuant to this subsection in determining bond amounts for the initial
15 bond and for any subsequent bond review and adjustment. The mine owner is responsible for the first \$5,000 in
16 contractor services provided under this subsection. The mine owner and the department are each responsible
17 for 50% of any amount over \$5,000.

18 (b) To select a third-party contractor as authorized in subsection (2)(a), the department shall prepare
19 a list of no fewer than four contractors acceptable to the department and shall provide the applicant with a copy
20 of the list. The applicant shall provide the department with a list of at least 50% of the contractors from the
21 department's list. The department shall select its contractor from the list provided by the applicant.

22 (3) (a) The department shall conduct an overview of the amount of each bond annually and shall
23 conduct a comprehensive bond review at least every 5 years. The department may conduct additional
24 comprehensive bond reviews if, after modification of a reclamation or operation plan, an annual overview, or an
25 inspection of the permit area, the department determines that an increase of the bond level may be necessary.
26 The department shall consult with the licensee or permittee if a review indicates that the bond level should be
27 adjusted. When determined by the department that the set bonding level of a permit or license does not
28 represent the present costs of compliance with this part, the rules, and the permit, the department shall modify

1 the bonding requirements of that permit or license. The licensee or permittee must have 60 days to negotiate
2 the preliminary bond determination with the department, at the end of which time period the department shall
3 issue the proposed bond determination. The department shall give the licensee or permittee a copy of the bond
4 calculations that form the basis for the proposed bond determination and, for operating permits, publish notice
5 of the proposed bond determination in a newspaper of general circulation in the county in which the operation is
6 located. The department shall issue a final bond determination in 30 days. Unless the licensee or permittee
7 requests a hearing under subsection (3)(b), the licensee or permittee shall post bond with the department in the
8 amount represented by the final bond determination no later than 30 days after issuance of the final bond
9 determination. If the licensee or permittee demonstrates that, through the exercise of reasonable diligence, the
10 licensee or permittee will not be able to post the bond within 30 days, the department shall grant a 30-day
11 extension of the deadline.

12 (b) The permittee or any person with an interest that may be adversely affected may obtain a
13 contested case hearing before the ~~board-department~~ BOARD under the provisions of the Montana Administrative
14 Procedure Act, Title 2, chapter 4, part 6, on the final bond determination by filing with the department, within 30
15 days of the issuance of the final bond determination, a written request for hearing stating the reason for the
16 request. The request for hearing must specify the amount of bond increase, if any, that the licensee or
17 permittee considers appropriate and state the reasons that the licensee or permittee considers the department's
18 final bond determination to be excessive. As a condition precedent to any right to request a hearing, the
19 licensee or permittee shall post bond with the department in the amount of the bond increase that the licensee
20 or permittee has stated is appropriate in the request for hearing or the amount that is one-half of the increase
21 contained in the department's final bond determination, whichever amount is greater. If the ~~board~~
22 ~~department~~ BOARD determines that additional bond is necessary, the licensee or permittee shall post bond in the
23 amount determined by the ~~board-department~~ BOARD within 30 days of receipt of the ~~board's~~ decision. If the
24 licensee or permittee demonstrates that, through the exercise of reasonable diligence, the licensee or permittee
25 will not be able to post the bond within 30 days, the department shall grant a reasonable extension of the
26 deadline.

27 (c) If a licensee or permittee fails to post bond in accordance with subsection (3)(a) or (3)(b) in the
28 required amounts by the required deadlines, the license or permit is suspended by operation of law and the

licensee or permittee shall immediately cease mining and exploration operations until the required bond is posted with and approved by the department.

(4) A bond filed in accordance with the provisions of this part may not be released by the department until the provisions of this part, the rules adopted pursuant to this part, and the permit have been fulfilled.

(5) A bond filed for an operating permit obtained under 82-4-335 may not be released or decreased until the public has been provided an opportunity for a hearing and a hearing has been held if requested. The department shall provide reasonable statewide and local notice of the opportunity for a hearing, including but not limited to publishing the notice in newspapers of general daily circulation.

(6) Except as provided in subsection (7), all bonds required in accordance with the provisions of this section must be based upon reasonably foreseeable activities that the applicant may conduct in order to comply with conditions of an operating permit or license. Bonds may be required only for anticipated activities as described in subsection (1). Only those activities that themselves or in conjunction with other activities have a reasonable possibility of occurring may be bonded. Bond calculations, including calculations for the initial bond or for subsequent bond reviews and adjustments, may not include amounts for any occurrence or contingency that is not a reasonably foreseeable result of any activity conducted by the applicant.

(7) (a) If the department determines, based on unanticipated circumstances that are discovered following the issuance of a mining permit, that a substantial and imminent danger to public health, public safety, or the environment exists or that there is a reasonable probability that a violation of water quality standards will occur, the department may require an operator to submit an amended reclamation plan to address the danger and to post a temporary bond to guarantee the performance of the amended portion of the reclamation plan. The temporary bond may only be required if the anticipated costs associated with the plan amendment would increase the total bond amount for the current plan by more than 10%, as determined in subsection (7)(b).

(b) (i) In determining the need for the temporary bond and the amount of the temporary bond under subsection (7)(a), the department shall select a third-party contractor in consultation with the operator pursuant to subsection (7)(b)(ii) to provide:

(A) a technical engineering analysis and report on the substantial and imminent danger to public health, public safety, or the environment identified in subsection (7)(a); and

(B) the estimated costs of addressing the potential danger in order to establish the amount of the

1 temporary bond.

2 (ii) The department shall provide the operator with a list of at least four qualified third-party contractors.

3 The operator shall select two qualified third-party contractors from that list. The department shall select its
4 contractor from the list provided by the operator. The operator shall reimburse the department for the
5 reasonable costs of the third-party contractor.

6 (c) An approved interim amended reclamation plan and interim bond must remain in effect until the
7 earlier of:

8 (i) the date that a revised reclamation plan is approved pursuant to 82-4-337 and a permanent bond
9 for the revised reclamation plan is submitted and accepted pursuant to this section; or

10 (ii) 2 years following the date of submission of a complete application pursuant to 82-4-337 to modify
11 the reclamation plan provision or remedy the conditions that created the need to amend the reclamation plan
12 unless the department approves or denies the complete application within 2 years of submission. The applicant
13 may agree to an extension of this deadline.

14 (d) Except as provided in subsection (8), the process provided for in this subsection (7) is not subject
15 to the provisions of Title 75, chapter 1.

16 (8) (a) In determining whether to require amendment of a reclamation plan under subsection (7)(a),
17 the department shall prepare or require the permittee to prepare a written analysis of changes in the
18 reclamation plan that may eliminate or mitigate to an acceptable level the environmental condition. The analysis
19 must include an assessment of the effectiveness of the changes and any potential negative environmental
20 impacts of the changes. The department shall prepare an environmental impact statement pursuant to Title 75,
21 chapter 1, only if the department determines that the changes would not mitigate the condition to an acceptable
22 level or may have potentially significant negative environmental impacts.

23 (b) If the department determines that preparation of an environmental impact statement is necessary,
24 the permittee shall pay the department's costs pursuant to 75-1-205.

25 (9) At the applicant's discretion, bonding in addition to that required by this section may be posted.
26 These unobligated bonds may, on the applicant's request, be applied to future bonds required by this section.

27 (10) (a) If the department determines that there exists at an area permitted or licensed under this part
28 an imminent danger to public health, public safety, or the environment caused by a violation of this part, the

1 rules adopted pursuant to this part, or the permit or license and if the permittee or licensee fails or refuses to
2 expeditiously abate the danger, the department may immediately suspend the permit or license, enter the site,
3 and abate the danger. The department may ~~thereafter~~ institute proceedings to revoke the license or permit,
4 declare the permittee or licensee in default, and forfeit a portion of the bond, not to exceed \$150,000 or 10% of
5 the bond, whichever is less, to be used to abate the danger. The department shall notify the surety of the
6 forfeiture and the forfeiture amount by certified mail, and the surety shall pay the forfeiture amount to the
7 department within 30 days of receipt of the notice. The department shall, as a condition of any termination of
8 the suspension and revocation proceedings, require that the permittee or licensee reimburse the surety, with
9 interest, for any amount paid to and expended by the department pursuant to this subsection (10) and for the
10 actual cost of the surety's expenses in responding to the department's forfeiture demand.

11 (b) If the department is unable to permanently abate the imminent danger using the amount forfeited
12 under subsection (10)(a), the department may forfeit additional amounts under the procedure provided in
13 subsection (10)(a).

14 (c) The department shall return to the surety any money received from the surety pursuant to this
15 subsection (10) and not used by the department to abate the imminent danger. The amount not returned to the
16 surety must be credited to the surety and reduces the penal amount of the bond on a dollar-for-dollar basis.

17 (d) Any interest accrued on bond proceeds that is not required to abate the imminent danger
18 determined in subsection (10)(a) must be returned to the surety, unless otherwise agreed to in writing by the
19 surety.

20 (11) If a bond is terminated as a result of the action or inaction of a licensee or permittee or is canceled
21 or otherwise terminated by the surety issuing the bond and the licensee or permittee fails to post a new bond
22 for the entire amount of the terminated bond within 30 days following the notice of termination provided to the
23 department, then the license or permit must be immediately suspended without further action by the
24 department. (Bracketed language in subsection (1)(a) terminates June 30, 2026--sec. 6, Ch. 458, L. 2019.)"

25
26 **Section 102.** Section 82-4-339, MCA, is amended to read:

27 **"82-4-339. Annual report of activities by permittee -- fee -- notice of large-scale mineral**
28 **developer status.** (1) Within 30 days after completion or abandonment of operations on an area under permit

1 or within 30 days after each anniversary date of the permit, whichever is earlier, or at a later date that may be
2 provided by ~~rules of the board~~ rule and each year after that date until reclamation is completed and approved,
3 the permittee shall pay the annual fee of \$100 and shall file a report of activities completed during the preceding
4 year on a form prescribed by the department. The report must:

5 (a) identify the permittee and the permit number;

6 (b) locate the operation by subdivision, section, township, and range and with relation to the nearest
7 town or other well-known geographic feature;

8 (c) estimate acreage to be newly disturbed by operation in the next 12-month period;

9 (d) include the number of persons on the payroll for the previous permit year and for the next permit
10 year at intervals that the department considers sufficient to enable a determination of the permittee's status
11 under 90-6-302(4);

12 (e) update the information required in 82-4-335(5)(a); and

13 (f) update any maps previously submitted or specifically requested by the department. The maps
14 must show:

15 (i) the permit area;

16 (ii) the unit of disturbed land;

17 (iii) the area to be disturbed during the next 12-month period;

18 (iv) if completed, the date of completion of operations;

19 (v) if not completed, the additional area estimated to be further disturbed by the operation within the
20 following permit year; and

21 (vi) the date of beginning, amount, and current status of reclamation performed during the previous 12
22 months.

23 (2) Whenever the department determines that the permittee has become or will, during the next
24 permit year, become a large-scale mineral developer, it shall immediately serve written notice of that fact on the
25 permittee, the hard-rock mining impact board, and the county or counties in which the operation is located."
26

27 **Section 103.** Section 82-4-342, MCA, is amended to read:

28 **"82-4-342. Amendment to operating permits.** (1) During the term of an operating permit issued

1 under this part, an operator may apply for a permit revision as described in subsections (5)(g) through (5)(j) or
2 an amendment to the permit. The operator may not apply for an amendment to delete disturbed acreage except
3 following reclamation, as required under 82-4-336, and bond release for the disturbance, as required under 82-
4 4-338.

5 (2) (a) The ~~board~~department may by rule establish criteria for the classification of amendments as
6 major or minor. The ~~board~~department shall adopt rules establishing requirements for the content of
7 applications for revisions and major and minor amendments and the procedures for processing revisions and
8 minor amendments.

9 (b) An amendment must be considered minor if:

10 (i) it is for the purpose of retention of mine-related facilities that are valuable for postmining use;

11 (ii) evidence is submitted showing that a local government has requested retention of the mine- related
12 facilities for a postmining use; and

13 (iii) the postmining use of the mine-related facilities meets the requirements provided for in 82-4-336.

14 (3) Applications for major amendments must be processed pursuant to 82-4-337.

15 (4) The department shall review an application for a revision or a minor amendment and provide a
16 notice of decision on the adequacy of the application within 30 days. If the department does not respond within
17 30 days, then the permit is revised or amended in accordance with the application.

18 (5) The department is not required to prepare an environmental assessment or an environmental
19 impact statement for the following categories of action and permit revisions:

20 (a) actions that qualify for a categorical exclusion as defined by rule or justified by a programmatic
21 review pursuant to Title 75, chapter 1;

22 (b) administrative actions, such as routine, clerical, or similar functions of a department, including but
23 not limited to administrative procurement, contracts for consulting services, and personnel actions;

24 (c) repair or maintenance of the permittee's equipment or facilities;

25 (d) investigation and enforcement actions, such as data collection, inspection of facilities, or
26 enforcement of environmental standards;

27 (e) ministerial actions, such as actions in which the agency does not exercise discretion, but acts
28 upon a given state of facts in a prescribed manner;

(f) approval of actions that are primarily social or economic in nature and that do not otherwise affect the human environment;

(g) changes in a permit boundary that increase disturbed acres that are insignificant in impact relative to the entire operation, provided that the increase is less than 25 acres or 10% of the permitted area, whichever is less;

(h) changes to an approved reclamation plan if the changes are consistent with this part and rules adopted pursuant to this part;

(i) changes in an approved operating plan for an activity that was previously permitted if the changes will be insignificant relative to the entire operation and the changes are consistent with subsection (5)(g);

(j) changes in a permit for the purpose of retention of mine-related facilities that are valuable for postmining use; and

(k) modifications to a tailings storage facility that result in a minor expansion to the facility if:

(i) the proposed modification is certified by the seal of the engineer of record;

(ii) the capacity increase resulting from the expansion is no greater than 15% of the capacity of the existing tailings storage facility; and

(iii) the modification complies with 82-4-376(2)(l) and (2)(dd) and is exempt under subsection (5)(g), (5)(h), or (5)(i) of this section."

Section 198. Section 82-4-353, MCA, is amended to read:

~~"82-4-353. (Temporary) Administrative remedies -- notice -- appeals -- parties. (1) Upon receipt of an application for an operating permit, the department shall provide notice of the application by publication in a newspaper of general circulation in the area to be affected by the operation. The notice must be published once a week for 3 successive weeks.~~

~~(2) An applicant for a permit or license or for an amendment or revision to a permit or license may request a hearing on a denial of the application by submitting a written request for a hearing within 30 days of receipt of written notice of the denial. The request must state the reason that the hearing is requested.~~

~~(3) All hearings and appeals under 82-4-337(4), 82-4-338(3)(b), 82-4-341(7) and (9), 82-4-361, 82-4-362, and subsection (2) of this section must be conducted by the board department in accordance with the~~

Montana Administrative Procedure Act. Any person whose interests may be adversely affected as a result of an action taken pursuant to this part may become a party to any proceeding held under this part upon a showing that the person is capable of adequately representing the interests claimed.

(4) As used in this section, "person" means any individual, corporation, partnership, or other legal entity. (Terminates June 30, 2026--sec. 6, Ch. 458, L. 2019.)

~~82-4-353. (Effective July 1, 2026) Administrative remedies--notice--appeals--parties.~~(1)

Upon receipt of an application for an operating permit, the department shall provide notice of the application by publication in a newspaper of general circulation in the area to be affected by the operation. The notice must be published once a week for 3 successive weeks.

(2) An applicant for a permit or license or for an amendment or revision to a permit or license may request a hearing on a denial of the application by submitting a written request for a hearing within 30 days of receipt of written notice of the denial. The request must state the reason that the hearing is requested.

(3) All hearings and appeals under 82-4-337(4), 82-4-338(3)(b), 82-4-341(7) and (8), 82-4-361, 82-4-362, and subsection (2) of this section must be conducted by the board department in accordance with the Montana Administrative Procedure Act. Any person whose interests may be adversely affected as a result of an action taken pursuant to this part may become a party to any proceeding held under this part upon a showing that the person is capable of adequately representing the interests claimed.

(4) As used in this section, "person" means any individual, corporation, partnership, or other legal entity."

Section 199. Section 82-4-361, MCA, is amended to read:

~~"82-4-361. Violation--penalties--waiver.~~ (1) When the department has reason to believe that a person is in violation of this part, a rule adopted or an order issued under this part, or a term or condition of a permit issued under this part, it shall send a violation letter to the person. The violation letter must describe the provision of the statute, rule, order, or permit alleged to be violated and the facts alleged to constitute the violation. The letter must also recommend corrective actions that are necessary to return to compliance. Issuance of a violation letter under this subsection does not limit the authority of the department under this part to bring a judicial action for penalties or injunctive relief or to initiate an administrative enforcement action.

~~(2) (a) By issuance of an order pursuant to subsection (6), the department may assess an administrative penalty of not less than \$100 or more than \$1,000 for each of the following violations and an additional administrative penalty of not less than \$100 or more than \$1,000 for each day during which the violation continues and may bring an action for an injunction from continuing the violation against:~~

~~(i) a person or operator who violates a provision of this part, a rule adopted or an order issued under this part, or a term or condition of a permit; or~~

~~(ii) any director, officer, or agent of a corporation who purposely or knowingly authorizes, orders, or carries out a violation of a provision of this part, a rule adopted or an order issued under this part, or a term or condition of a permit.~~

~~(b) If the violation created an imminent danger to the health or safety of the public or caused significant environmental harm, the maximum administrative penalty is \$5,000 for each day of violation.~~

~~(c) This subsection does not limit the authority of the department to bring a judicial action for penalties or injunctive relief prior to or instead of initiating an administrative enforcement action under this part.~~

~~(3) The department may bring a judicial action seeking a penalty of not more than \$5,000 for a violation listed in subsection (2)(a) and a penalty of not more than \$5,000 for each day that the violation continues.~~

~~(4) Penalties assessed under this section must be determined in accordance with the penalty factors in 82-4-1001.~~

~~(5) The department may bring an action for a restraining order or a temporary or permanent injunction against an operator or other person violating or threatening to violate an order issued under this part.~~

~~(6) (a) In addition to the violation letter sent pursuant to subsection (1), the department may also issue an order if it has credible information that a violation listed in subsection (2) has occurred. The order must specify the provision of the part, rule, order, or permit alleged to be violated and the facts alleged to constitute the violation. The order may require necessary corrective action within a reasonable period of time, may assess an administrative penalty determined in accordance with this section, or both. The order must be served personally or by certified mail.~~

~~(b) An order issued pursuant to subsection (6)(a) becomes final unless, within 30 days after the order is served, the person to whom the order is issued submits to the board department a written request for a~~

1 hearing stating the reason for the request. Service of the order by mail is complete 3 business days after
2 mailing. If a request for a hearing is submitted, a hearing must be held within a reasonable time under the
3 contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6. After a
4 hearing, the board department shall affirm, modify, or rescind the order.

5 ~~(7) Legal actions for penalties or injunctive relief under this section must be brought in the district~~
6 ~~court of the county in which the alleged violation occurred or, if mutually agreed to by the parties to the action,~~
7 ~~in the first judicial district, Lewis and Clark County."~~

8
9 **Section 200.** Section 82-4-362, MCA, is amended to read:

10 **~~"82-4-362. Suspension of permits -- hearing.~~** (1) If any of the requirements of this part, of the rules
11 adopted under this part, or of a license or permit has not been complied with, the department shall serve a
12 notice of violation on the licensee or permittee or, if necessary, the director shall order the suspension of the
13 license or permit. A license or permit may also be suspended for failure to comply with an order to pay a civil
14 penalty if the order is not subject to administrative or judicial review. The director may order immediate
15 suspension of a license or permit whenever the director finds that a violation of this part, of the rules adopted
16 under this part, or of a license or permit is creating an imminent danger to the health or safety of persons
17 outside the permit area. The notice or order must be handed to the licensee or permittee in person or served on
18 the licensee or permittee by certified mail addressed to the permanent address shown on the application for a
19 license or permit. The notice of violation or order of suspension must specify the provision of this part, the rules
20 adopted under this part, or the license or permit violated and the facts alleged to constitute the violation and
21 must, if the violation has not been abated, order abatement within a specified time period.

22 ~~(2) If the licensee or permittee has not complied with the requirements set forth in the notice of~~
23 ~~violation or order of suspension within the time limits set in the notice or order, the license or permit may be~~
24 ~~revoked by order of the department and the performance bond forfeited to the department. The notice of~~
25 ~~violation or order of suspension must state when those measures may be undertaken and must give notice of~~
26 ~~the opportunity for a hearing before the board department. A hearing may be requested by submitting a written~~
27 ~~request stating the reason for the request to the board department within 30 days after receipt of the notice or~~
28 ~~order. If a hearing is requested within the 30-day period, the license or permit may not be revoked and the bond~~

1 ~~may not be forfeited until a final decision is made by the board department.~~

2 ~~(3) If a permittee fails to pay the fee or file the report required under 82-4-339, the department shall~~
3 ~~serve notice of this failure, by certified mail or personal delivery, on the permittee. If the permittee does not~~
4 ~~comply within 30 days of receipt of the notice, the director shall suspend the permit. The director shall reinstate~~
5 ~~the permit upon compliance."~~

6

7 **Section 104.** Section 82-4-371, MCA, is amended to read:

8 **"82-4-371. Reclamation of abandoned mine sites.** (1) Agents, employees, or contractors of the
9 department may enter upon property for the purpose of conducting studies or exploratory work to determine
10 whether the property has been mined and not reclaimed and rehabilitated in accordance with the requirements
11 of this part and to determine the feasibility of restoration or reclamation of the property or abatement, control, or
12 prevention of the adverse effects of past mining practices. The department may bring an injunctive action to
13 restrain interference with the exercise of the right to enter and inspect granted in this subsection.

14 (2) (a) The department may enter upon property pursuant to subsection (2)(b) if it makes a finding
15 that:

16 (i) land or water resources on the property have been adversely affected by past mining practices;

17 (ii) the adverse effects are at a stage that, in the public interest, action to restore or reclaim the
18 property or to abate, control, or prevent the adverse effects should be taken; and

19 (iii) the owners of the land or water resources where entry must be made to restore or reclaim the
20 property or to abate, control, or prevent the adverse effects of past mining practices are not known or readily
21 available or the owners will not give permission for the department or its agents, employees, or contractors to
22 enter upon the property to restore or reclaim the property or to abate, control, or prevent the adverse effects of
23 past mining practices.

24 (b) If the department has made findings pursuant to subsection (2)(a), agents, employees, or
25 contractors of the department may enter upon property adversely affected by past mining practices and other
26 property necessary for access to the adversely affected property to do all things necessary or expedient to
27 restore or reclaim the property or to abate, control, or prevent the adverse effects of past mining practices after:

28 (i) giving notice by mail to the owner, if known, and a purchaser under contract for deed, if known; or

(ii) if neither is known, posting notice upon the property and advertising in a newspaper of general circulation in the county in which the property lies.

(c) Entry upon property pursuant to this section is not an act of condemnation of property or of trespass but rather an exercise of the power granted by Article IX, sections 1 and 2, of the Montana constitution.

(3) The ~~board~~department may acquire the necessary property by gift or purchase. A gift or purchase must be approved by the board of land commissioners. If the property cannot be acquired by gift or purchase at a reasonable cost, proceedings may be instituted in the manner provided in Title 70, chapter 30, against all nonaccepting landholders if:

(a) acquisition of the property is necessary for successful reclamation;

(b) the acquired property after restoration or reclamation or after abatement, control, or prevention of the adverse effects of past mining practices will serve recreation and historic purposes or conservation and reclamation purposes or provide open space benefits; and

(c) (i) permanent facilities, such as treatment plants or relocated stream channels, will be constructed on the property for the restoration or reclamation of the property or for abatement, control, or prevention of the adverse effects of past mining practices; or

(ii) acquisition of refuse disposal sites and all refuse on the sites will serve the purposes of this part in that public ownership is desirable to meet emergency situations and prevent recurrences of the adverse effects of past mining practices.

(4) The department may record in the office of the clerk and recorder in the county in which property that has been reclaimed pursuant to 82-4-424 or this section is located a notice that the property has been mined and reclaimed. The notice must include the date and a brief description of the reclamation."

Section 202. ~~Section 82-4-403, MCA, is amended to read:~~

~~"82-4-403. Definitions. When used in this part, unless a different meaning clearly appears from the context, the following definitions apply:~~

~~(1) "Affected land" means the area of land and land covered by water that is disturbed by open cut operations. A private road may be included as affected land only with the landowner's consent.~~

~~(2) "Amendment" means a change to the approved permit.~~

~~(3) "Board" means the board of environmental review provided for in 2-15-3502.~~

~~(4)(3) "Department" means the department of environmental quality provided for in 2-15-3501.~~

~~(5)(4) "Landowner" means the holder of legal title to land subjected to an opencut operation.~~

~~(6)(5) "Materials" means bentonite, clay, scoria, peat, sand, soil, gravel, or mixtures of those substances.~~

~~(7)(6) "Opencut operation" means activities conducted for the primary purpose of sale or utilization of materials, including:~~

~~(a) mine site preparation;~~

~~(b) (i) removing the overburden and mining directly from the exposed natural deposits; or~~

~~(ii) mining directly from natural deposits of materials;~~

~~(c) processing of materials mined from the natural deposits, except that processing facilities located more than 300 feet from where materials were mined or are permitted to be mined are not part of the opencut operation;~~

~~(d) transporting, depositing, staging, and stockpiling of overburden and materials unless the activity occurs more than 300 feet from where the materials were mined or are permitted to be mined;~~

~~(e) storing or stockpiling of materials at processing facilities that are part of the opencut operation;~~

~~(f) reclamation of affected land; and~~

~~(g) parking or staging of vehicles, equipment, or supplies unless:~~

~~(i) the activity is separated from other opencut operations by at least 25 feet and is connected to the opencut operation by a single road that is no more than 25 feet wide; or~~

~~(ii) the activity is inside the construction disturbance area shown on a construction project plan.~~

~~(8)(7) "Operator" means a person who holds a permit issued pursuant to this part. For purposes of enforcing the provisions of this part, the term also includes any person conducting opencut operations on affected land that is not covered by a permit.~~

~~(9)(8) "Overburden" means the earth that lies above a natural deposit of materials.~~

~~(10)(9) "Person" means:~~

~~(a) a natural person;~~

~~(b) a firm, association, partnership, cooperative, or corporation;~~

~~(c) a department, agency, or instrumentality of the state or any governmental subdivision; or~~

~~(d) any other entity.~~

~~(11)(10) "Plan of operation" means a plan that:~~

~~(a) meets the requirements of 82-4-434; and~~

~~(b) contains a description of current land use, topographical data, hydrologic data, soils data, proposed mine areas, proposed mining and processing operations, proposed reclamation, and appropriate maps.~~

~~(12)(11) "Processing facilities" means:~~

~~(a) crushers, screens, and pug mills;~~

~~(b) asphalt, wash, and concrete plants;~~

~~(c) treatment, sedimentation, or retention areas for processing facilities; and~~

~~(d) areas receiving washout from vehicles and equipment using the processing facilities.~~

~~(13)(12) "Reclamation" means the reconditioning of affected land to make the area suitable for productive use, including but not limited to forestry, agriculture, grazing, wildlife, recreation, or residential or industrial development.~~

~~(14)(13) "Soil" means the dark or root-bearing surface matter that has been generated through time by the interaction of biological activity, climate, topography, and parent material and that is capable of sustaining plant growth and is recognized and identified as such by standard authorities and methods."~~

Section 105. Section 82-4-406, MCA, is amended to read:

"82-4-406. Exemption -- opencut operations on federal and state lands. This part is not applicable to operations on certain federal and state lands as specified by the ~~board~~ department, provided it is first determined by the ~~board~~ department that laws, regulations, or rules administered or issued by the federal or state agency administering or having jurisdiction over the affected land impose controls for opencut operations on those lands equal to or greater than those imposed by this part."

Section 106. Section 82-4-422, MCA, is amended to read:

1 **"82-4-422. Powers, duties, and functions.** (1) The department has the powers, duties, and functions
2 to:

3 (a) issue permits when, on the basis of the information set forth in the application and an evaluation of
4 the proposed opencut operations, the department finds that the requirements of this part and rules adopted to
5 implement this part will be observed;

6 (b) amend permits in accordance with the provisions of 82-4-436;

7 (c) reclaim any affected land with respect to which a bond has been forfeited;

8 (d) make investigations or inspections that are considered necessary to ensure compliance with any
9 provision of this part; and

10 (e) enforce and administer the provisions of this part and issue orders necessary to implement the
11 provisions of this part.

12 (2) The ~~board~~department shall:

13 (a) adopt rules that pertain to opencut operations in order to accomplish the purposes of this part;

14 (b) adopt rules:

15 (i) establishing uniform procedures for filing of necessary records;

16 (ii) providing procedures for the issuance of permits and filing of annual reports; and

17 (iii) providing other administrative requirements ~~that the board considers~~ necessary to implement this
18 part; and .

19 (3) THE BOARD SHALL conduct hearings and, for the purposes of conducting those hearings, administer
20 oaths and affirmations, subpoena witnesses, compel attendance of witnesses, hear evidence, and require the
21 production of any books, papers, correspondence, memoranda, agreements, documents, or other records
22 relevant or material to the inquiry."

23
24 ~~Section 205. Section 82-4-427, MCA, is amended to read:~~

25 ~~"82-4-427. Hearing -- appeal -- venue. (1) (a) Subject to subsections (1)(b) and (1)(c), a person~~
26 ~~whose interests are or may be adversely affected by a final decision of the department to approve or~~
27 ~~disapprove a permit application and accompanying material or a permit amendment application and~~
28 ~~accompanying material under this part is entitled to a hearing before the board~~ department ~~if a written request~~

1 stating the reasons for the appeal is submitted to the board department within 30 days of the department's
2 decision.

3 (b) ~~If an application was noticed publicly as required by this part, to be eligible to file for an appeal a~~
4 ~~person must have either submitted comments to the department on an application or submitted comments at a~~
5 ~~public meeting held under 82-4-432.~~

6 (c) ~~Subsection (1)(b) does not apply to a person filing for an appeal of an application that was not~~
7 ~~required to be noticed publicly by this part.~~

8 (2) ~~An operator may request a hearing before the board department on:~~

9 (a) ~~a final decision of the department director pursuant to 82-4-436(4) by submitting a request for a~~
10 ~~hearing within 15 days of receipt of notice of the director's decision; and~~

11 (b) ~~an order of suspension or revocation issued under 82-4-442 by filing a request for hearing within~~
12 ~~30 days of receipt of the decision.~~

13 (3) ~~The operator or the landowner may request a hearing before the board department on a decision~~
14 ~~on a bond release application by submitting a written request stating the reasons for the appeal within 30 days~~
15 ~~of the receipt of the decision.~~

16 (4) ~~The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4,~~
17 ~~part 6, apply to a hearing held under this section.~~

18 (5) ~~A petition for judicial review of a board department decision made pursuant to this section must~~
19 ~~be brought in the county in which the permitted activity is proposed to occur or, if mutually agreed upon by both~~
20 ~~parties in the action, in the first judicial district, Lewis and Clark County. If an activity is proposed to occur in~~
21 ~~more than one county, the action may be brought in any of the counties in which the activity is proposed to~~
22 ~~occur.~~

23 (6) ~~The petition for judicial review must include the party to whom the permit was issued or the~~
24 ~~applicant unless otherwise agreed to by the permit holder or applicant. All judicial challenges of permits for~~
25 ~~projects with a project cost, as determined by the court, of more than \$1 million must have precedence over any~~
26 ~~civil cause of a different nature pending in that court. If the court determines that the challenge was without~~
27 ~~merit or was for an improper purpose, such as to harass, to cause unnecessary delay, or to impose needless or~~
28 ~~increased cost in litigation, the court may award attorney fees and costs incurred in defending the action."~~

1

2 **Section 107.** Section 82-4-437, MCA, is amended to read:

3 **"82-4-437. Annual report -- fees.** (1) For each opencut operation, the operator shall file an annual
4 report on a form furnished by the department. The report must contain the information and be submitted at
5 times provided in rules of the ~~board~~ department.

6 (2) (a) Except as provided in subsection (2)(b), each opencut operation shall submit with the annual
7 report a fee of 4.5 cents per cubic yard of materials for all operations mined during the period covered by the
8 report.

9 (b) Opencut operations that mine, extract, or produce bentonite are not subject to the fee in
10 subsection (2)(a).

11 (3) The department:

12 (a) shall require the operator to pay the following fees:

13 (i) \$1,500 for each permit application submitted pursuant to 82-4-432(1); and

14 (ii) for each amendment application submitted pursuant to 82-4-432(11):

15 (A) \$750 if the date of the amendment application is 10 years or less from the date of the permit
16 approval; or

17 (B) \$1,500 if the date of the amendment application is more than 10 years from the date of the permit
18 approval; and

19 (b) shall adopt rules for applications or responses that are administrative. Fees, if any, for
20 administrative actions identified under this subsection (3) may not exceed \$250.

21 (4) Pursuant to the provisions of 82-4-441, a person who mines materials without a permit in violation
22 of this part shall submit a report and the fees required by subsections (2)(a) and (3)(a)(i) of this section."

23

24 ~~**Section 207.** Section 82-4-441, MCA, is amended to read:~~

25 ~~**"82-4-441. Administrative and judicial penalties -- enforcement.** (1) When the department has~~
26 ~~reason to believe that a person is in violation of this part, a rule adopted or an order issued under this part, or a~~
27 ~~term or condition of a permit issued under this part, it shall send a violation letter to the person. The violation~~
28 ~~letter must describe the provision of the statute, rule, order, or permit alleged to be violated and the facts~~

1 ~~alleged to constitute the violation. The letter must also recommend corrective actions that are necessary to~~
2 ~~return to compliance. Issuance of a violation letter under this subsection does not limit the authority of the~~
3 ~~department under this part to bring a judicial action for penalties or injunctive relief or to initiate an~~
4 ~~administrative enforcement action.~~

5 ~~(2) By issuance of an order pursuant to subsection (5), the department may assess against a person~~
6 ~~who violates any of the provisions of this part, rules adopted or orders issued under this part, or provisions of a~~
7 ~~permit:~~

8 ~~(a) an administrative penalty of not less than \$100 or more than \$1,000 for the violation; and~~

9 ~~(b) an additional administrative penalty of not less than \$100 or more than \$1,000 for each day during~~
10 ~~which a violation continues.~~

11 ~~(3) The department may bring a judicial action seeking a penalty of not more than \$5,000 against a~~
12 ~~person who violates any of the provisions of this part, rules adopted or orders issued under this part, or~~
13 ~~provisions of a permit and a penalty of not more than \$5,000 for each day that the violation continues. In~~
14 ~~determining the amount of the penalty, the district court shall consider the factors in subsection (4).~~

15 ~~(4) Penalties assessed under this section must be determined in accordance with the penalty factors~~
16 ~~in 82-4-1001.~~

17 ~~(5) (a) In addition to the violation letter sent pursuant to subsection (1), the department may also~~
18 ~~issue an order if it has credible information that a violation listed in subsection (2) has occurred. The order must~~
19 ~~specify the provision of the part, rule, order, or permit alleged to be violated and the facts alleged to constitute~~
20 ~~the violation. The order may require necessary corrective action within a reasonable period of time, may assess~~
21 ~~an administrative penalty determined in accordance with this section, or both. The order must be served~~
22 ~~personally or by certified mail.~~

23 ~~(b) An order issued pursuant to subsection (5)(a) becomes final unless, within 30 days after the order~~
24 ~~is served, the person to whom the order is issued submits to the board department a written request for a~~
25 ~~hearing stating the reason for the request. Service of an order by mail is complete 3 business days after~~
26 ~~mailing. If a request for a hearing is filed, a hearing must be held within a reasonable time under the contested~~
27 ~~case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6. After a hearing, the~~
28 ~~board department shall affirm, modify, or rescind the order.~~

~~(6) The department may bring an action to enjoin an operator or other person violating or threatening to violate this part, rules adopted pursuant to this part, or a permit issued pursuant to this part. Actions for injunctions or penalties must be filed in the district court of the county in which the open-cut operation is located or, if mutually agreed on by both parties in the action, in the first judicial district, Lewis and Clark County.~~

~~(7) The provisions of this section do not limit the authority of the department to bring a judicial action for penalties or injunctive relief prior to or instead of initiating an administrative enforcement action under this part."~~

Section 208. ~~Section 82-4-442, MCA, is amended to read:~~

~~"82-4-442. Suspension and revocation orders. (1) (a) The department may, after affording the operator an opportunity for an informal conference, order the suspension of a permit if:~~

~~(i) the operator fails to comply with a penalty order or a corrective action order issued pursuant to 82-4-441; or~~

~~(ii) the operator has violated this part, a rule adopted pursuant to this part, or the permit and the violation could reasonably be expected to create a danger to the health or safety of persons outside the permit area or significant environmental harm to land, air, or water. The order of suspension must be served on the operator personally or by certified mail addressed to the permanent address shown on the most recently filed annual report. The order of suspension must specify the provision of this part, the rules adopted under this part, or the permit violated and the facts alleged to constitute the violation and must, if the violation has not been corrected, order corrective action within a specified time period.~~

~~(b) The department may order immediate suspension of a permit whenever it finds that a violation of this part, the rules adopted under this part, or a permit is creating an imminent danger to the health or safety of persons outside the permit area. The order must require immediate corrective action.~~

~~(c) The operator upon whom an order is served may file a request for hearing with the board department within 30 days of service of the order. The request for hearing must specify the reason for the request. The filing of a request for hearing on an order issued does not stay the suspension or corrective action requirement, but the board department may, upon written request of the operator, stay either or both of these requirements.~~

~~(2) If the operator has not complied with the requirements set forth in the order of suspension within the time limits set in the order, the permit may be revoked by order of the department and the performance bond forfeited to the department. The operator may request a hearing before the board department by submitting a written request stating the reason for the request to the board department within 30 days after service of the order. If a hearing is requested within the 30-day period, the permit may not be revoked and the bond may not be forfeited until the board department makes a final decision.~~

~~(3) If an operator fails to file the report required under 82-4-437, the department shall serve personally or by certified mail a notice letter informing the operator of the failure. If the operator does not file the report within 30 days of receipt of the letter, the department may issue a penalty order pursuant to 82-4-441 or a suspension order pursuant to this section. If the permit has been suspended, the department shall reinstate the permit upon compliance.~~

~~(4) Maintenance, monitoring, reporting, reclamation, and other activities required by statute, rule, or the permit and intended to protect public health or safety or the environment must continue during any period of suspension unless otherwise provided in the order."~~

Section 108. Section 82-4-445, MCA, is amended to read:

"82-4-445. Reclamation of abandoned mine sites. (1) Agents, employees, or contractors of the department may enter upon property for the purpose of conducting studies or exploratory work to determine whether the property has been mined and not reclaimed and rehabilitated in accordance with the requirements of this part and to determine the feasibility of restoration or reclamation of the property or abatement, control, or prevention of the adverse effects of past mining practices. The department may bring an injunctive action to restrain interference with the exercise of the right to enter and inspect granted in this subsection.

(2) (a) The department may enter upon property pursuant to subsection (2)(b) if it makes a finding that:

- (i) land or water resources on the property have been adversely affected by past mining practices;
- (ii) the adverse effects are at a stage that, in the public interest, action to restore or reclaim the property or to abate, control, or prevent the adverse effects should be taken; and
- (iii) the owners of the land or water resources where entry must be made to restore or reclaim the

1 property or to abate, control, or prevent the adverse effects of past mining practices are not known or readily
2 available or the owners will not give permission for the department or its agents, employees, or contractors to
3 enter upon the property to restore or reclaim the property or to abate, control, or prevent the adverse effects of
4 past mining practices.

5 (b) If the department has made findings pursuant to subsection (2)(a), agents, employees, or
6 contractors of the department may enter upon property adversely affected by past mining practices and other
7 property necessary for access to the adversely affected property to do all things necessary or expedient to
8 restore or reclaim the property or to abate, control, or prevent the adverse effects of past mining practices after:

9 (i) giving notice by mail to the owner, if known, and a purchaser under contract for deed, if known; or

10 (ii) if neither is known, posting notice upon the property and advertising in a newspaper of general
11 circulation in the county in which the property lies.

12 (c) Entry upon property pursuant to this section is not an act of condemnation of property or of
13 trespass but rather an exercise of the power granted by Article IX, sections 1 and 2, of the Montana
14 constitution.

15 (3) The ~~board~~department may acquire the necessary property by gift or purchase, or if the property
16 cannot be acquired by gift or purchase at a reasonable cost, proceedings may be instituted in the manner
17 provided in Title 70, chapter 30, against all nonaccepting landholders if:

18 (a) acquisition of the property is necessary for successful reclamation;

19 (b) the acquired property after restoration or reclamation or after abatement, control, or prevention of
20 the adverse effects of past mining practices will serve recreation and historic purposes or conservation and
21 reclamation purposes or provide open space benefits; and

22 (c) (i) permanent facilities, such as treatment plants or relocated stream channels, will be constructed
23 on the property for the restoration or reclamation of the property or for abatement, control, or prevention of the
24 adverse effects of past mining practices; or

25 (ii) acquisition of refuse disposal sites and all refuse on the sites will serve the purposes of this part in
26 that public ownership is desirable to meet emergency situations and prevent recurrences of the adverse effects
27 of past mining practices.

28 (4) The department may record in the office of the clerk and recorder in the county in which property

1 that has been reclaimed pursuant to 82-4-424 or this section is located a notice that the property has been
2 mined and reclaimed. The notice must include the date and a brief description of the reclamation."

3
4 **Section 109.** Section 82-4-1001, MCA, is amended to read:

5 **"82-4-1001. Penalty factors.** (1) In determining the amount of an administrative or civil penalty
6 assessed under the statutes listed in subsection (4), the department of environmental quality or the district
7 court, as appropriate, shall take into account the following factors:

- 8 (a) the nature, extent, and gravity of the violation;
9 (b) the circumstances of the violation;
10 (c) the violator's prior history of any violation, which:
11 (i) must be a violation of a requirement under the authority of the same chapter and part as the
12 violation for which the penalty is being assessed;
13 (ii) must be documented in an administrative order or a judicial order or judgment issued within 3 years
14 prior to the date of the occurrence of the violation for which the penalty is being assessed; and
15 (iii) may not, at the time that the penalty is being assessed, be undergoing or subject to administrative
16 appeal or judicial review;
17 (d) the economic benefit or savings resulting from the violator's action;
18 (e) the violator's good faith and cooperation;
19 (f) the amounts voluntarily expended by the violator, beyond what is required by law or order, to
20 address or mitigate the violation or impacts of the violation; and
21 (g) other matters that justice may require.

22 (2) Except for penalties assessed under 82-4-254, after the amount of a penalty is determined under
23 (1), the department of environmental quality or the district court, as appropriate, may consider the violator's
24 financial ability to pay the penalty and may institute a payment schedule or suspend all or a portion of the
25 penalty.

26 (3) Except for penalties assessed under 82-4-254, the department of environmental quality may
27 accept a supplemental environmental project as mitigation for a portion of the penalty. For purposes of this
28 section, a "supplemental environmental project" is an environmentally beneficial project that a violator agrees to

1 undertake in settlement of an enforcement action but which the violator is not otherwise legally required to
2 perform.

3 (4) This section applies to penalties assessed by the department of environmental quality or the
4 district court under 82-4-141, 82-4-254, 82-4-361, and 82-4-441.

5 (5) ~~The board of environmental review and the~~ department of environmental quality may, ~~for the~~
6 ~~statutes listed in subsection (4) for which each has rulemaking authority,~~ adopt rules to implement this section."

7

8 **Section 110.** Section 82-15-102, MCA, is amended to read:

9 **"82-15-102. Enforcement of part -- rules.** (1) Except as provided in subsection (2), this part must be
10 enforced by the department. It may adopt necessary and reasonable rules for the implementation of the
11 provisions and intent of this part, and those rules have the effect of law.

12 (2) Section 82-15-110(8) must be enforced by the department of environmental quality.

13 (3) ~~The board of environmental review~~ department of environmental quality shall adopt rules for the
14 regulation of methyl tertiary butyl ether in accordance with this part. The rules must establish:

15 (a) a trace level or trace levels of methyl tertiary butyl ether that may be contained in gasoline that is
16 imported into the state, stored, distributed, sold, offered or exposed for sale, or dispensed in the state of
17 Montana. ~~The board~~ department of environmental quality shall establish trace levels in a manner that prevents
18 the intentional addition of methyl tertiary butyl ether to gasoline but that allows for a residual amount of methyl
19 tertiary butyl ether to remain in tanks following implementation of 82-15-110(8).

20 (b) reasonable sampling and reporting requirements; and

21 (c) requirements that the ~~board~~ department of environmental quality determines are reasonable and
22 necessary for implementation of the portions of this part that apply to methyl tertiary butyl ether."

23

24 ~~**Section 212.** Section 82-15-120, MCA, is amended to read:~~

25 ~~**"82-15-120. Department of environmental quality to enforce prohibition on methyl tertiary**~~
26 ~~**butyl ether -- notice requirements -- hearing -- penalties.** (1) (a) Whenever the department of environmental~~
27 ~~quality believes that a violation of 82-15-110(8) or of the rules adopted pursuant to 82-15-102(3) has occurred,~~
28 ~~it may serve written notice of the violation on the alleged violator or an agent of the alleged violator.~~

(b) ~~The notice must specify the facts alleged to constitute a violation and may include an order assessing an administrative penalty pursuant to subsection (3), an order to take necessary corrective action within a reasonable period of time stated in the order, or both.~~

(c) ~~The order becomes final unless, within 30 days after the notice is served, the person named in the order requests in writing a hearing before the board of environmental review department of environmental quality. Service by mail is complete on the date of mailing.~~

(d) ~~Upon receipt of the request, the board of environmental review department of environmental quality shall schedule a hearing. The contested case provisions of the Montana Administrative Procedure Act provided in Title 2, chapter 4, part 6, apply to a hearing conducted under this section.~~

(2) ~~If, after a hearing held under subsection (1), the board of environmental review department of environmental quality finds that a violation has occurred, it shall either affirm or modify the its order of the department of environmental quality. An order issued by the department of environmental quality or by the board of environmental review may prescribe the date by which the violation must cease and may prescribe time limits for a particular action. If, after hearing, the board of environmental review department of environmental quality finds no violation has occurred, it shall rescind the department of environmental quality's order.~~

(3) ~~A violation of 82-15-110(8) or of a rule adopted pursuant to 82-15-102(3) is subject to an administrative penalty of up to \$1,000. Each day of violation constitutes a separate violation.~~

(4) ~~Any person who violates 82-15-110(8), a rule adopted pursuant to 82-15-102(3), or an order issued under this section is subject to a civil penalty not to exceed \$5,000 for each violation. Each day of violation constitutes a separate violation.~~

(5) ~~The department of environmental quality is authorized to commence a civil action seeking appropriate relief, including temporary and permanent injunctions and penalties under subsection (4) of this section, for a violation of 82-15-110(8), a rule adopted pursuant to 82-15-102(3), or a violation of an order issued under this section. The action must be brought in the district court of the first judicial district, Lewis and Clark County, or in the district court of the county in which the violation occurred."~~

NEW SECTION. Section 111. Repealer. The following sections of the Montana Code Annotated are

1 repealed:

2 ~~2-15-3502. Board of environmental review.~~

3 ~~75-2-111. Powers of board.~~

4 75-6-103. Duties of board.

5 75-10-106. Duties of board.

6 82-4-111. Rules of board -- hearings.

7 82-4-204. Board rules.

8

9 ~~NEW SECTION. Section 214. Name change -- directions to code commissioner. Wherever a~~
10 ~~reference to the board of environmental review, meaning the board established in 2-15-3502, appears in~~
11 ~~legislation enacted by the 2021 legislature, the code commissioner is directed to change it to an appropriate~~
12 ~~reference to the department of environmental quality.~~

13

14 NEW SECTION. SECTION 112. TRANSITION. RULEMAKING AUTHORITY AND EXISTING RULES UNDER THE
15 JURISDICTION OF THE BOARD OF ENVIRONMENTAL REVIEW ARE TRANSFERRED TO THE DEPARTMENT OF ENVIRONMENTAL
16 QUALITY ON [THE EFFECTIVE DATE OF THIS ACT].

17

18 NEW SECTION. SECTION 113. EFFECTIVE DATE. [THIS ACT] IS EFFECTIVE JULY 1, 2021.

19

20 - END -



AN ACT GENERALLY REVISING LAWS RELATED TO THE BOARD OF ENVIRONMENTAL REVIEW; REASSIGNING DUTIES AND POWERS OF THE BOARD OF ENVIRONMENTAL REVIEW; TRANSFERRING RULEMAKING AUTHORITY; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTIONS 7-13-4502, 7-13-4513, 7-13-4517, 50-2-116, 75-1-1001, 75-2-105, 75-2-111, 75-2-112, 75-2-201, 75-2-202, 75-2-203, 75-2-204, 75-2-206, 75-2-207, 75-2-211, 75-2-212, 75-2-215, 75-2-217, 75-2-218, 75-2-219, 75-2-220, 75-2-221, 75-2-231, 75-2-234, 75-2-301, 75-2-302, 75-2-422, 75-2-428, 75-5-103, 75-5-106, 75-5-201, 75-5-203, 75-5-222, 75-5-301, 75-5-302, 75-5-303, 75-5-304, 75-5-305, 75-5-307, 75-5-308, 75-5-310, 75-5-311, 75-5-312, 75-5-313, 75-5-315, 75-5-316, 75-5-318, 75-5-401, 75-5-402, 75-5-502, 75-5-514, 75-5-515, 75-5-516, 75-5-802, 75-6-104, 75-6-105, 75-6-106, 75-6-107, 75-6-108, 75-6-112, 75-6-116, 75-6-121, 75-6-131, 75-10-104, 75-10-112, 75-10-115, 75-10-221, 75-11-505, 75-11-508, 75-20-105, 75-20-216, 75-20-406, 75-20-407, 75-20-1001, 75-20-1203, 75-20-1205, 76-3-622, 76-4-1001, 80-15-105, 80-15-110, 80-15-201, 82-4-102, 82-4-112, 82-4-123, 82-4-129, 82-4-205, 82-4-207, 82-4-223, 82-4-226, 82-4-231, 82-4-232, 82-4-234, 82-4-235, 82-4-239, 82-4-254, 82-4-304, 82-4-309, 82-4-321, 82-4-332, 82-4-335, 82-4-338, 82-4-339, 82-4-342, 82-4-371, 82-4-406, 82-4-422, 82-4-437, 82-4-445, 82-4-1001, AND 82-15-102, MCA; REPEALING SECTIONS 75-6-103, 75-10-106, 82-4-111, AND 82-4-204, MCA; AND PROVIDING AN EFFECTIVE DATE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 7-13-4502, MCA, is amended to read:

"7-13-4502. Definitions. As used in this part, unless the context indicates otherwise, the following definitions apply:

(1) "Board of directors" means the board of directors provided for in 7-13-4516 or a joint board of directors provided for in 7-13-4527.

~~(2) "Board of environmental review" means the board of environmental review as provided in 2-15-~~

3502-

~~(3)~~(2) "Commissioners" means the board of county commissioners or the governing body of a city-county consolidated government.

(3) "Department" means the department of environmental quality provided for in 2-15-3501.

(4) "Family residential unit" means a single-family dwelling.

(5) "Fee-assessed units" means all real property with improvements, including taxable and tax-exempt property as shown on the property assessment records maintained by the county, and mobile homes and manufactured homes as defined in 15-24-201.

(6) "Local water quality district" means an area established with definite boundaries for the purpose of protecting, preserving, and improving the quality of surface water and ground water in the district as authorized by this part."

Section 2. Section 7-13-4513, MCA, is amended to read:

"7-13-4513. Insufficient protest to bar proceedings -- resolution creating district -- power to implement local water quality program. (1) The commissioners may create a local water quality district, establish fees, and appoint a board of directors if the commissioners find that insufficient protests have been made in accordance with 7-13-4511 or if the registered voters who reside in the proposed district have approved a referendum as provided in 7-13-4512.

(2) To create a local water quality district, the commissioners shall pass a resolution in accordance with the resolution of intention introduced and passed by the commissioners or in accordance with the terms of the referendum.

(3) The commissioners and board of directors may implement a local water quality program after the program is approved by the ~~board of environmental review~~ department pursuant to 75-5-311."

Section 3. Section 7-13-4517, MCA, is amended to read:

"7-13-4517. Powers and duties of board of directors. The board of directors of a local water quality district, with the approval of the commissioners, may:

(1) develop a local water quality program, to be submitted to the ~~board of environmental review~~

department, for the protection, preservation, and improvement of the quality of surface water and ground water in the district. In developing the program, the board of directors shall consult with the board or boards of supervisors of conservation districts, established as provided in 76-15-201, whose geographical area of jurisdiction is included within the boundaries of the local water quality district.

- (2) implement a local water quality program;
- (3) administer the budget of the local water quality district;
- (4) employ personnel;
- (5) purchase, rent, or lease equipment and material necessary to develop and implement an effective program;
- (6) cooperate or contract with any corporation, association, individual, or group of individuals, including any agency of the federal, state, or local government, in order to develop and implement an effective program;
- (7) receive gifts, grants, or donations for the purpose of advancing the program and acquire, by gift, deed, or purchase, land necessary to implement the local water quality program;
- (8) administer local ordinances that are adopted by the commissioners and governing bodies of the participating cities and towns and that pertain to the protection, preservation, and improvement of the quality of surface water and ground water;
- (9) apply for and receive from the federal government or the state government, on behalf of the local water quality district, money to aid the local water quality program;
- (10) borrow money for assistance in planning or refinancing a local water quality district and repay loans with the money received from the established fees; and
- (11) construct facilities that cost not more than \$5,000 and maintain facilities necessary to accomplish the purposes of the district, including but not limited to facilities for removal of water-borne contaminants; water quality improvement; sanitary sewage collection, disposal, and treatment; and storm water or surface water drainage collection, disposal, and treatment."

Section 4. Section 50-2-116, MCA, is amended to read:

"50-2-116. Powers and duties of local boards of health. (1) In order to carry out the purposes of

the public health system, in collaboration with federal, state, and local partners, each local board of health shall:

- (a) appoint and fix the salary of a local health officer who is:
 - (i) a physician;
 - (ii) a person with a master's degree in public health; or
 - (iii) a person with equivalent education and experience, as determined by the department;
- (b) elect a presiding officer and other necessary officers;
- (c) employ qualified staff;
- (d) adopt bylaws to govern meetings;
- (e) hold regular meetings at least quarterly and hold special meetings as necessary;
- (f) identify, assess, prevent, and ameliorate conditions of public health importance through:
 - (i) epidemiological tracking and investigation;
 - (ii) screening and testing;
 - (iii) isolation and quarantine measures;
 - (iv) diagnosis, treatment, and case management;
 - (v) abatement of public health nuisances;
 - (vi) inspections;
 - (vii) collecting and maintaining health information;
 - (viii) education and training of health professionals; or
 - (ix) other public health measures as allowed by law;
- (g) protect the public from the introduction and spread of communicable disease or other conditions of public health importance, including through actions to ensure the removal of filth or other contaminants that might cause disease or adversely affect public health;
- (h) supervise or make inspections for conditions of public health importance and issue written orders for compliance or for correction, destruction, or removal of the conditions;
- (i) bring and pursue actions and issue orders necessary to abate, restrain, or prosecute the violation of public health laws, rules, and local regulations;
- (j) identify to the department an administrative liaison for public health. The liaison must be the local health officer in jurisdictions that employ a full-time local health officer. In jurisdictions that do not employ a full-

time local health officer, the liaison must be the highest ranking public health professional employed by the jurisdiction.

(k) subject to the provisions of 50-2-130, adopt necessary regulations that are not less stringent than state standards for the control and disposal of sewage from private and public buildings and facilities that are not regulated by Title 75, chapter 6, or Title 76, chapter 4. The regulations must describe standards for granting variances from the minimum requirements that are identical to standards promulgated by the ~~board of environmental review~~ department of environmental quality and must provide for appeal of variance decisions to the department of environmental quality as required by 75-5-305. If the local board of health regulates or permits water well drilling, the regulations must prohibit the drilling of a well if the well isolation zone, as defined in 76-4-102, encroaches onto adjacent private property without the authorization of the private property owner.

(2) Local boards of health may:

(a) accept and spend funds received from a federal agency, the state, a school district, or other persons or entities;

(b) adopt necessary fees to administer regulations for the control and disposal of sewage from private and public buildings and facilities;

(c) adopt regulations that do not conflict with 50-50-126 or rules adopted by the department:

(i) for the control of communicable diseases;

(ii) for the removal of filth that might cause disease or adversely affect public health;

(iii) subject to the provisions of 50-2-130, for sanitation in public and private buildings and facilities that affects public health and for the maintenance of sewage treatment systems that do not discharge effluent directly into state water and that are not required to have an operating permit as required by rules adopted under 75-5-401;

(iv) subject to the provisions of 50-2-130 and Title 50, chapter 48, for tattooing and body-piercing establishments and that are not less stringent than state standards for tattooing and body-piercing establishments;

(v) for the establishment of institutional controls that have been selected or approved by the:

(A) United States environmental protection agency as part of a remedy for a facility under the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9601, et seq.; or

(B) department of environmental quality as part of a remedy for a facility under the Montana Comprehensive Environmental Cleanup and Responsibility Act, Title 75, chapter 10, part 7; and

(vi) to implement the public health laws; and

(d) promote cooperation and formal collaborative agreements between the local board of health and tribes, tribal organizations, and the Indian health service regarding public health planning, priority setting, information and data sharing, reporting, resource allocation, service delivery, jurisdiction, and other matters addressed in this title.

(3) A local board of health may provide, implement, facilitate, or encourage other public health services and functions as considered reasonable and necessary."

Section 5. Section 75-1-1001, MCA, is amended to read:

"75-1-1001. Penalty factors. (1) In determining the amount of an administrative or civil penalty to which subsection (4) applies, the department of environmental quality or the district court, as appropriate, shall take into account the following factors:

(a) the nature, extent, and gravity of the violation;

(b) the circumstances of the violation;

(c) the violator's prior history of any violation, which:

(i) must be a violation of a requirement under the authority of the same chapter and part as the violation for which the penalty is being assessed;

(ii) must be documented in an administrative order or a judicial order or judgment issued within 3 years prior to the date of the occurrence of the violation for which the penalty is being assessed; and

(iii) may not, at the time that the penalty is being assessed, be undergoing or subject to administrative appeal or judicial review;

(d) the economic benefit or savings resulting from the violator's action;

(e) the violator's good faith and cooperation;

(f) the amounts voluntarily expended by the violator, beyond what is required by law or order, to address or mitigate the violation or impacts of the violation; and

(g) other matters that justice may require.

(2) After the amount of a penalty is determined under subsection (1), the department of environmental quality or the district court, as appropriate, may consider the violator's financial ability to pay the penalty and may institute a payment schedule or suspend all or a portion of the penalty.

(3) The department of environmental quality may accept a supplemental environmental project as mitigation for a portion of the penalty. For purposes of this section, a "supplemental environmental project" is an environmentally beneficial project that a violator agrees to undertake in settlement of an enforcement action but which the violator is not otherwise legally required to perform.

(4) This section applies to penalties assessed by the department of environmental quality or the district court under Title 75, chapters 2, 5, 6, 8, 11, and 20; Title 75, chapter 10, parts 2, 4, 5, and 12; and Title 76, chapter 4.

(5) ~~The board of environmental review and the~~ department of environmental quality may, ~~for the statutes listed in subsection (4) for which each has rulemaking authority,~~ adopt rules to implement this section."

Section 6. Section 75-2-105, MCA, is amended to read:

"75-2-105. Confidentiality of records. (1) Records or other information concerning air pollutant sources that are furnished to or obtained by the ~~board or~~ department are a matter of public record and open to public use. However, any information unique to the owner or operator of an air pollutant source that would, if disclosed, reveal methods or processes entitled to protection as trade secrets must be maintained as confidential if so determined by a court of competent jurisdiction. The owner or operator shall file a declaratory judgment action to establish the existence of a trade secret if the owner or operator wishes the information to enjoy confidential status. The department must be served in the action and may intervene as a party in the action. A trade secret not intended to be public when submitted to the ~~board or~~ department must be submitted in writing and clearly marked as confidential. However, emission data and operating permits issued by the department pursuant to 75-2-217 through 75-2-219 may not be considered confidential for the purposes of this section.

(2) This section does not prevent the use of records or information by the ~~board or~~ department in compiling or publishing analyses or summaries relating to the general condition of the outdoor atmosphere if the analyses or summaries do not identify an owner or operator or reveal information otherwise made

confidential by this section."

Section 7. Section 75-2-111, MCA, is amended to read:

"75-2-111. Powers of board. The board shall, subject to the provisions of 75-2-207:

~~(1) adopt, amend, and repeal rules for the administration, implementation, and enforcement of this chapter, for issuing orders under and in accordance with 42 U.S.C. 7419, and for fulfilling the requirements of 42 U.S.C. 7420 and regulations adopted pursuant to that section, except that, for purposes other than agricultural open burning, the board may not adopt permitting requirements or any other rule relating to:~~

~~(a) any agricultural activity or equipment that is associated with the use of agricultural land or the planting, production, processing, harvesting, or storage of agricultural crops by an agricultural producer and that is not subject to the requirements of 42 U.S.C. 7475, 7503, or 7661a;~~

~~(b) a commercial operation relating to the activities or equipment referred to in subsection (1)(a) that remains in a single location for less than 12 months and is not subject to the requirements of 42 U.S.C. 7475, 7503, or 7661a; or~~

~~(c) forestry equipment and its associated engine used for forestry practices that remain in a single location for less than 12 months and are not subject to the requirements of 42 U.S.C. 7475, 7503, or 7661a;~~

~~(2)~~(1) hold hearings relating to any aspect of or matter in the administration of this chapter at a place designated by the board. The board may compel the attendance of witnesses and the production of evidence at hearings. The board shall designate an attorney to assist in conducting hearings and shall appoint a reporter who must be present at all hearings and take full stenographic notes of all proceedings, transcripts of which will be available to the public at cost.

~~(3)~~(2) issue orders necessary to effectuate the purposes of this chapter;

~~(4) by rule require access to records relating to emissions;~~

~~(5) by rule adopt a schedule of fees required for permits, permit applications, and registrations consistent with this chapter;~~

~~(6)~~(3) have the power to issue orders under and in accordance with 42 U.S.C. 7419."

Section 8. Section 75-2-112, MCA, is amended to read:

"75-2-112. Powers and responsibilities of department. (1) The department is responsible for the administration of this chapter.

(2) Subject to the provisions of 75-2-207, the department shall:

(a) adopt, amend, and repeal rules for the administration, implementation, and enforcement of this chapter, and for fulfilling the requirements of 42 U.S.C. 7420 and regulations adopted pursuant to that section, except that, for purposes other than agricultural open burning, the department may not adopt permitting requirements or any other rule relating to:

(i) any agricultural activity or equipment that is associated with the use of agricultural land or the planting, production, processing, harvesting, or storage of agricultural crops by an agricultural producer and that is not subject to the requirements of 42 U.S.C. 7475, 7503, or 7661a;

(ii) a commercial operation relating to the activities or equipment referred to in subsection (2)(a)(i) that remains in a single location for less than 12 months and is not subject to the requirements of 42 U.S.C. 7475, 7503, or 7661a; or

(iii) forestry equipment and its associated engine used for forestry practices that remain in a single location for less than 12 months and are not subject to the requirements of 42 U.S.C. 7475, 7503, or 7661a;

~~(e)(b)~~ issue orders necessary to effectuate the purposes of this chapter;

~~(d)(c)~~ by rule require access to records relating to emissions; and

~~(e)(d)~~ by rule adopt a schedule of fees required for permits, permit applications, and registrations consistent with this chapter.

~~(2)(3)~~ The department shall:

(a) by appropriate administrative and judicial proceedings, enforce orders issued by the department or the board;

(b) secure necessary scientific, technical, administrative, and operational services, including laboratory facilities, by contract or otherwise;

(c) prepare and develop a comprehensive plan for the prevention, abatement, and control of air pollution in this state;

(d) encourage voluntary cooperation by persons and affected groups to achieve the purposes of this chapter;

(e) encourage local units of government to handle air pollution problems within their respective jurisdictions on a cooperative basis and provide technical and consultative assistance for this. If local programs are financed with public funds, the department may contract with the local government to share the cost of the program. However, the state share may not exceed 30% of the total cost.

(f) encourage and conduct studies, investigations, and research relating to air contamination and air pollution and their causes, effects, prevention, abatement, and control;

(g) determine, by means of field studies and sampling, the degree of air contamination and air pollution in the state;

(h) make a continuing study of the effects of the emission of air contaminants from motor vehicles on the quality of the outdoor atmosphere of this state and make recommendations to appropriate public and private bodies with respect to this;

(i) collect and disseminate information and conduct educational and training programs relating to air contamination and air pollution;

(j) advise, consult, contract, and cooperate with other agencies of the state, local governments, industries, other states, interstate and interlocal agencies, the United States, and any interested persons or groups;

(k) consult, on request, with any person proposing to construct, install, or otherwise acquire an air contaminant source or device or system for the control thereof concerning the efficacy of this device or system or the air pollution problems which may be related to the source, device, or system. Nothing in this consultation relieves a person from compliance with this chapter, rules in force under it, or any other provision of law.

(l) accept, receive, and administer grants or other funds or gifts from public or private agencies, including the United States, for the purpose of carrying out this chapter. Funds received under this section shall be deposited in the state treasury to the account of the department.

~~(3)(4)~~ The department may assess fees to the applicant for the analysis of the environmental impact of an application to redesignate the classification of any area, except those areas within the exterior boundaries of a reservation of a federally recognized Indian tribe, under the classifications established by 42 U.S.C. 7470 through 7479 (prevention of significant deterioration of air quality). The determination of whether or not a fee will be assessed is to be on a case-by-case basis."

Section 9. Section 75-2-201, MCA, is amended to read:

"75-2-201. Classifying and reporting air contaminant sources. (1) The ~~board~~department may classify air contaminant sources ~~which that~~ in its judgment may cause or contribute to air pollution according to levels and types of emissions and other characteristics ~~which that~~ relate to air pollution and may require reporting for any such class or classes. ~~Such~~The classifications ~~shall~~must be made with special reference to effects on health, economic and social factors, and physical effects on property and may be applied to the state as a whole or to any designated area.

(2) Any person operating or responsible for the operation of air contaminant sources of any class for which the rules of the ~~board~~department may require reporting shall make reports containing ~~such any~~ information as may be required concerning location, size and height of contaminant outlets, processes employed, fuels used, and the nature and time periods or duration of emissions and any other matter relevant to air pollution ~~which that~~ is available or reasonably capable of being assembled."

Section 10. Section 75-2-202, MCA, is amended to read:

"75-2-202. ~~Board~~Department to set ambient air quality standards. (1) The ~~board~~department shall establish ambient air quality standards for the state.

(2) Ambient air quality standards for fluorides ~~shall~~must be established through limitations upon the concentration of fluorides in forage grasses, hay, and silage."

Section 11. Section 75-2-203, MCA, is amended to read:

"75-2-203. ~~Board~~Department to set emission levels. (1) The ~~board~~department may establish the limitations of the levels, concentrations, or quantities of emissions of various pollutants from any source necessary to prevent, abate, or control air pollution. Except as otherwise provided in or pursuant to this section, ~~such those~~ levels, concentrations, or quantities ~~shall be~~are controlling, and no emission in excess ~~there of~~shall be of those levels is lawful.

(2) In any area where the concentration of air pollution sources or of population or where the nature of the economy or of land and its uses ~~so may~~ require, the ~~board~~department may fix more stringent requirements

governing the emission of air pollutants than those in effect pursuant to subsection (1) ~~of this section~~.

(3) The ~~board~~department may by rule use any widely recognized measuring system for measuring emission of air contaminants.

(4) Should federal minimum standards of air pollution be set by federal law, the ~~board~~department may, if necessary in some localities of this state, set more stringent standards by rule."

Section 12. Section 75-2-204, MCA, is amended to read:

"75-2-204. Rules relating to construction, installation, alteration, operation, or use. The ~~board~~department may by rule prohibit the construction, installation, alteration, operation, or use of a machine, equipment, device, or facility that it finds may directly or indirectly cause or contribute to air pollution or that is intended primarily to prevent or control the emission of air pollutants, unless the owner or operator ~~has obtained~~obtains a permit under this part or has registered the source of air contaminants with the department if the source is in a category for which only registration is required by the rules adopted to implement this part."

Section 13. Section 75-2-206, MCA, is amended to read:

"75-2-206. Study of effects of sulfur dioxide on health and environment. (1) To the extent that funds are available, the ~~board~~department shall conduct an ongoing study in areas of Montana where there are major industrial sources of sulfur dioxide. The study must ~~shall~~ concentrate on the effects on human health and the environment of ambient sulfur dioxide concentrations separately and in conjunction with particulates.

(2) Notwithstanding other funding sources to pay for the study, the ~~board~~department may accept funds and grants from private and public sources."

Section 14. Section 75-2-207, MCA, is amended to read:

"75-2-207. State regulations no more stringent than federal regulations or guidelines -- exceptions -- procedure. (1) After April 14, 1995, except as provided in subsections (2) and (3) or unless required by state law, the ~~board or~~ department may not adopt a rule to implement this chapter that is more stringent than the comparable federal regulations or guidelines that address the same circumstances. The ~~board or~~ department may incorporate by reference comparable federal regulations or guidelines.

(2) (a) The ~~board or~~ department may adopt a rule to implement this chapter that is more stringent than comparable federal regulations or guidelines only if:

(i) a public hearing is held;

(ii) public comment is allowed; and

(iii) the ~~board or the~~ department makes a written finding after the public hearing and comment period that is based on evidence in the record that the proposed standard or requirement:

(A) protects public health or the environment;

(B) can mitigate harm to the public health or the environment; and

(C) is achievable with current technology.

(b) The written finding required under subsection (2)(a)(iii) must reference information and peer-reviewed scientific studies contained in the record that form the basis for the ~~board's or~~ the department's conclusion. The written finding must also include information from the hearing record regarding costs to the regulated community that are directly attributable to the proposed standard or requirement.

(c) (i) A person or entity affected by a rule of the ~~board or~~ department adopted after January 1, 1990, and before April 14, 1995, that the person or entity believes is more stringent than comparable federal regulations or guidelines may petition the ~~board or~~ department to review the rule.

(ii) If the ~~board or~~ department determines that the rule is more stringent than comparable federal regulations or guidelines, the ~~board or~~ department shall either revise the rule to conform to the federal regulations or guidelines or follow the process provided in subsections (2)(a) and (2)(b) within a reasonable period of time, not to exceed 6 months after receiving the petition.

(iii) A petition under this section does not relieve the petitioner of the duty to comply with the challenged rule. The ~~board or~~ department may charge a petition filing fee in an amount not to exceed \$250.

(iv) A person may also petition the ~~board or~~ department for a rule review under subsection (2)(a) if the ~~board or~~ department adopts a rule after January 1, 1990, in an area in which no federal regulations or guidelines existed and the federal government subsequently establishes comparable regulations or guidelines that are less stringent than the previously adopted ~~board or~~ department rule.

(3) This section does not apply to a rule adopted under the emergency rulemaking provisions of 2-4-303(1)."

Section 15. Section 75-2-211, MCA, is amended to read:

"75-2-211. Permits for construction, installation, alteration, or use. (1) The ~~board~~department shall by rule provide for the issuance, modification, suspension, revocation, and renewal of a permit issued under this part.

(2) (a) Except as provided in 75-1-208(4)(b), 75-2-234, and subsections (2)(b) and (2)(c) of this section, not later than 180 days before construction, installation, or alteration begins or as a condition of use of any machine, equipment, device, or facility that the ~~board~~department finds may directly or indirectly cause or contribute to air pollution or that is intended primarily to prevent or control the emission of air pollutants, the owner or operator shall file with the department the appropriate permit application on forms available from the department.

(b) Except as provided in subsection (2)(e), the owner or operator of an oil or gas well facility shall file the permit application with the department no later than January 3, 2006, or 60 days after the initial well completion date, whichever is later. For purposes of this section, the initial well completion date for an oil or gas well facility is:

(i) for an oil or gas well facility producing oil, the date when the first oil is produced through wellhead equipment into lease tanks from the ultimate producing interval after casing has been run; and

(ii) for an oil or gas well facility producing gas, the date when the oil or gas well facility is capable of producing gas through wellhead equipment from the ultimate producing interval after casing has been run.

(c) An owner or operator who complies with subsection (2)(b) may construct, install, or use equipment necessary to complete or operate an oil or gas well facility without a permit until the department's decision on the application is final. If the owner or operator does not comply with subsection (2)(b), the owner or operator may not operate the oil or gas well facility and is liable for a violation of this section for every day of construction, installation, or operation of the facility.

(d) The ~~board~~department shall adopt rules establishing air emission control requirements applicable to an oil or gas well facility during the time from the initial well completion date until the department's decision on the application is final.

(e) The provisions of subsections (2)(b) and (2)(c) do not apply to an oil or gas well facility subject to

the federal air permitting provisions of 42 U.S.C. 7475 or 7503.

(3) The permit program administered by the department pursuant to this section must include the following:

- (a) requirements and procedures for permit applications, including standard application forms;
- (b) requirements and procedures for submittal of information necessary to determine the location, quantity, and type of emissions;
- (c) procedures for public notice and opportunity for comment or public hearing, as appropriate;
- (d) procedures for providing notice and an opportunity for comment to contiguous states and federal agencies, as appropriate;
- (e) requirements for inspection, monitoring, recordkeeping, and reporting;
- (f) procedures for the transfer of permits;
- (g) requirements and procedures for suspension, modification, and revocation of permits by the department;
- (h) requirements and procedures for appropriate emission limitations and other requirements, including enforceable measures necessary to ensure compliance with those limitations and requirements;
- (i) requirements and procedures for permit modification and amendment; and
- (j) requirements and procedures for issuing a single permit authorizing emissions from similar operations at multiple temporary locations, which permit may include conditions necessary to ensure compliance with the requirements of this chapter at all authorized locations and a requirement that the owner or operator notify the department in advance of each change in location.

(4) This section does not restrict the ~~board's~~ department's authority to adopt regulations providing for a single air quality permit system.

(5) Department approval of an application to transfer a portable emission source from one location to another is exempt from the provisions of 75-1-201(1).

(6) The department may, for good cause shown, waive or shorten the time required for filing the appropriate applications.

(7) The department shall require that applications for permits be accompanied by any plans, specifications, and other information that it considers necessary.

(8) An application is not considered filed until the applicant has submitted all fees required under 75-2-220 and all information and completed application forms required pursuant to subsections (2), (3), and (7) of this section. If the department fails to notify the applicant in writing within 30 days after the purported filing of an application that the application is incomplete and fails to list the reasons why the application is considered incomplete, the application is considered filed as of the date of the purported filing.

(9) (a) Except as provided in 75-1-205(4) and 75-1-208(4)(b), if an application for a permit requires the preparation of an environmental impact statement under the Montana Environmental Policy Act, Title 75, chapter 1, parts 1 through 3, the department shall notify the applicant in writing of the approval or denial of the application:

(i) within 180 days after the department's receipt of a filed application, as provided in subsection (8), if the department prepares the environmental impact statement;

(ii) within 30 days after issuance of the final environmental impact statement by the lead agency if a state agency other than the department has been designated by the governor as lead agency for preparation of the environmental impact statement; or

(iii) if the application is for a machine, equipment, a device, or a facility at an operation that requires a permit under Title 82, chapter 4, part 1, 2, or 3, within 30 days of issuance of the final environmental impact statement in accordance with time requirements of Title 82, chapter 4, part 1, 2, or 3.

(b) If an application does not require the preparation of an environmental impact statement, is not subject to the provisions of 75-2-215, and is not subject to the federal air quality permitting provisions of 42 U.S.C. 7475, 7503, or 7661a, the department shall notify the applicant in writing within 60 days after its receipt of a filed application, as provided in subsection (8), of its approval or denial of the application, except as provided in subsection (14).

(c) If an application does not require the preparation of an environmental impact statement and is subject to the federal air permitting provisions of 42 U.S.C. 7475, 7503, or 7661a, the department shall notify the applicant, in writing, within 75 days after its receipt of a filed application, as provided in subsection (8), of its approval or denial of the application.

(d) Except as provided in subsection (9)(e), if an application does not require the preparation of an environmental impact statement and is subject to the provisions of 75-2-215, the department shall notify the

applicant of its approval or denial of the application, in writing, within 75 days after its receipt of a filed application, as provided in subsection (8).

(e) If an application for a permit is for the construction, installation, alteration, or use of a source that is also required to obtain a license pursuant to 75-10-221 or a permit pursuant to 75-10-406, the department shall prepare a single environmental review document pursuant to Title 75, chapter 1, for the permit required under this section and the license or permit required under 75-10-221 or 75-10-406 and act on the applications within the time period provided for in 75-2-215(3)(e).

(f) The time for notification may be extended for 30 days by written agreement of the department and the applicant. Additional 30-day extensions may be granted by the department upon the request of the applicant. Notification of approval or denial may be served personally or by certified mail on the applicant or the applicant's agent.

(g) Failure by the department to act in a timely manner does not constitute approval or denial of the application. This does not limit or abridge the right of any person to seek available judicial remedies to require the department to act in a timely manner.

(10) Except as provided in 75-2-213, when the department approves or denies the application for a permit under this section, a person who is directly and adversely affected by the department's decision may request a hearing before the ~~board~~ board. The request for hearing must be filed within 15 days after the department renders its decision. An affidavit setting forth the grounds for the request must be filed within 30 days after the department renders its decision. The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing before the ~~board~~ board under this subsection.

(11) Except as provided in 75-2-213:

(a) the department's decision on the application is not final until 15 days have elapsed from the date of the decision;

(b) the filing of a request for hearing does not stay the department's decision. However, the ~~board~~ board may order a stay upon receipt of a petition and a finding, after notice and opportunity for hearing, that:

- (i) the person requesting the stay is entitled to the relief demanded in the request for a hearing; or
- (ii) continuation of the permit during the appeal would produce great or irreparable injury to the person requesting the stay.

(c) upon granting a stay, the ~~board~~board may require a written undertaking to be given by the party requesting the stay for the payment of costs and damages incurred by the permit applicant and its employees if the ~~board~~board determines that the permit was properly issued. When requiring an undertaking, the ~~board~~board shall use the same procedures and limitations as are provided in 27-19-306(2) through (4) for undertakings on injunctions.

(12) The ~~board~~department shall provide, by rule, a period of 30 days in which the public may submit comments on draft air quality permits for applications that:

- (a) are subject to the federal air quality permitting provisions of 42 U.S.C. 7475, 7503, or 7661a;
- (b) are subject to the requirements of 75-2-215; or
- (c) require the preparation of an environmental impact statement.

(13) The ~~board~~department shall provide, by rule, a period of 15 days in which the public may submit comments on draft air quality permits not subject to subsection (12).

(14) The ~~board~~department shall provide, by rule, the basis upon which the department may extend by 15 days:

- (a) the period as provided in subsection (13) in which the public may submit comments on draft air quality permits not subject to subsection (12); and
- (b) the period for notifying an applicant of its final decision on approval or denial of an application, as provided in subsection (9)(b).

(15) (a) The ~~board~~department may adopt rules for issuance, modification, suspension, revocation, renewal, or creation of:

- (i) general permits covering multiple similar sources; or
 - (ii) other permits covering multiple similar sources.
- (b) Rules adopted pursuant to subsection (15)(a) may provide for construction and operation under the permit upon authorization by the department or upon notice to the department."

Section 16. Section 75-2-212, MCA, is amended to read:

"75-2-212. Variances -- renewals -- filing fees. (1) A person who owns or is in control of a plant, building, structure, process, or equipment may apply to the ~~board~~department for an exemption or partial

exemption from rules governing the quality, nature, duration, or extent of emissions of air pollutants. The application must be accompanied by information and data that the ~~board~~ department may require. The ~~board~~ department may grant an exemption or partial exemption if it finds that:

(a) the emissions occurring or proposed to occur do not constitute a danger to public health or safety; and

(b) compliance with the rules from which an exemption is sought would produce hardship without equal or greater benefits to the public.

(2) An exemption or partial exemption may not be granted pursuant to this section except after public hearing on due notice and until the ~~board~~ department has considered the relative interests of the applicant, other owners or property likely to be affected by the emissions, and the general public.

(3) The exemption or partial exemption may be renewed if a complaint is not made to the ~~board~~ department because of it or if, after the complaint has been made and duly considered at a public hearing held by the ~~board~~ department on due notice, the ~~board~~ department finds that renewal is justified. A renewal may not be granted except on application. An application must be made at least 60 days before the expiration of the exemption or partial exemption. Immediately before application for renewal, the applicant shall give public notice of the application in accordance with rules of the ~~board~~ department. A renewal pursuant to this subsection must be on the same grounds and subject to the same limitations and requirements as provided in subsection (1).

(4) An exemption, partial exemption, or renewal is not a right of the applicant or holder but may be granted at the discretion of the ~~board~~ department. However, a person adversely affected by an exemption, partial exemption, or renewal granted by the ~~board~~ department may obtain judicial review as provided by 75-2-411.

(5) This section and an exemption, partial exemption, or renewal granted pursuant to this section may not be construed to prevent or limit the application of the emergency provisions and procedures of 75-2-402 to a person or the person's property.

(6) A person who owns or is in control of a plant, building, structure, process, or equipment, which are called facilities, who applies to the ~~board~~ department for an exemption or partial exemption or a renewal of an exemption or partial exemption from a rule governing the quality, nature, duration, or extent of emissions of air

pollutants shall submit with the application for variance a sum of not less than \$500 or 2% of the cost of the equipment to bring the facility into compliance with the rule for which a variance is sought, whichever is greater, but not to exceed \$80,000. The department shall prepare a statement of actual costs, and funds in excess of this must be returned to the applicant. The person requesting the variance shall describe the facility in sufficient detail, with accompanying estimates of cost and verifying materials, to permit the department to determine with reasonable accuracy the sum of the fee. For a renewal of an exemption or partial exemption, if a public hearing, environmental impact statement, or appreciable investigation by the department is not necessary, the minimum filing fee applies or the fee may be waived by the department. The filing fee must be deposited in the state special revenue fund provided for in 17-2-102. It is the intent of the legislature that the revenue derived from the filing fees must be used by the department to:

- (a) compile the information required for rendering a decision on the request;
- (b) compile the information necessary for any environmental impact statements;
- (c) offset the costs of a public hearing, printing, or mailing; and
- (d) carry out its other responsibilities under this chapter."

Section 17. Section 75-2-215, MCA, is amended to read:

"75-2-215. Solid or hazardous waste incineration -- additional permit requirements. (1) Until the department ~~has issued~~ issues an air quality permit pursuant to 75-2-211 that includes the conditions required by this section, a person may not construct, install, alter, or use a solid or hazardous waste incinerator or a boiler or industrial furnace subject to the provisions of 75-10-406, except as provided in subsection (2).

(2) An existing or permitted solid or hazardous waste incinerator or a boiler or industrial furnace subject to the provisions of 75-10-406 is subject to the provisions of subsection (1) only if it incinerates or uses as fuel or would incinerate or use as fuel solid or hazardous waste in an amount, form, kind, or content that changes the nature, character, or composition of its emissions from its design or permitted operation.

(3) The department may not issue a permit to a facility described in subsection (1) until:

- (a) the owner or operator ~~has provided~~ provides to the department's satisfaction:
 - (i) a characterization of emissions and ambient concentrations of air pollutants, including hazardous air pollutants, from any existing emission source at the facility; and

(ii) an estimate of emissions and ambient concentrations of air pollutants, including hazardous air pollutants, from the incineration of solid or hazardous waste or the use of hazardous waste as fuel for a boiler or industrial furnace, as proposed in the permit application or modification;

(b) if a license is required pursuant to 75-10-221 or a permit is required pursuant to 75-10-406, the applicant has published, in the county where the project is proposed, at least three notices, in accordance with the procedures identified in 7-1-4127, describing the proposed project;

(c) if a license is required pursuant to 75-10-221 or a permit is required pursuant to 75-10-406, the department has conducted a public hearing on an environmental review prepared pursuant to Title 75, chapter 1, and, as appropriate, provided additional opportunities for the public to review and comment on the permit application or modification;

(d) the department ~~has reached~~ reaches a determination that the projected emissions and ambient concentrations will constitute a negligible risk to the public health, safety, and welfare and to the environment; and

(e) the department ~~has issued~~ issues a license pursuant to 75-10-221 or a permit pursuant to 75-10-406, if a license or permit is required. The decision to issue, deny, or alter a permit pursuant to 75-2-211 and this section must be made within 30 days from when the department issues a license pursuant to 75-10-221 or a permit pursuant to 75-10-406 or within 90 days after the receipt of a complete application for a permit or a permit alteration under 75-2-211 and this section, whichever is later.

(4) The department shall require the application of air pollution control equipment, engineering, or other operating procedures as necessary to provide reductions of air pollutants, including hazardous air pollutants, equivalent to or more stringent than those achieved through the best available control technology.

(5) The ~~board~~ department may by rule provide for general air quality permits under the provisions of 75-2-211 and this section. The rules must cover numerous similar classes or categories of incinerators and boilers or industrial furnaces.

(6) This section does not relieve an owner or operator of a solid or hazardous waste incinerator or a boiler or industrial furnace that is not included under subsection (1) from the obligation to obtain any permit otherwise required under this chapter or rules implementing this chapter."

Section 18. Section 75-2-217, MCA, is amended to read:

"75-2-217. Operating permit program -- exemptions -- general requirements -- duration. (1) The ~~board-department~~ shall provide by rule for the issuance, expiration, modification, amendment, suspension, revocation, and renewal of operating permits as part of an operating permit program to be administered by the department under this chapter. The ~~board-department~~ shall promulgate rules that are consistent with the operating permit framework and guidelines outlined in Subchapter V of the federal Clean Air Act and implementing regulations.

(2) This section applies to all sources of air pollutants that are subject to the provisions of Subchapter V of the federal Clean Air Act, 42 U.S.C. 7661, et seq.

(3) A person may not violate any requirement of an operating permit issued under 75-2-218 and this section or operate any source required to have a permit under this section without having complied with the requirements of the operating permit program administered by the department pursuant to 75-2-218, 75-2-219, and this section.

(4) The ~~board-department~~ may by rule provide for the exemption of one or more source categories, in whole or in part, from all or part of the requirements of this section if the ~~board-department~~ determines that compliance with the requirements of this section is impracticable, infeasible, or unnecessarily burdensome for the sources. The ~~board-department~~ may premise this determination upon a similar determination by the appropriate federal agency acting pursuant to the federal Clean Air Act, 42 U.S.C. 7401, et seq.

(5) The ~~board-department~~ may by rule provide for general operating permits covering numerous similar sources.

(6) An operating permit issued by the department under 75-2-218 and this section is effective for a period not to exceed 5 years and may be renewed.

(7) The operating permit program administered by the department pursuant to this section must include the following:

- (a) adequate procedures that are streamlined and reasonable for:
 - (i) expeditiously determining when applications are complete;
 - (ii) processing applications; and
 - (iii) expeditiously reviewing permit actions, including application renewals or revisions;

- (b) requirements and procedures for submittal of information necessary to determine the location, quantity, and type of emissions;
- (c) procedures for public notice and opportunity for comment or public hearing, as appropriate;
- (d) procedures for providing notice and an opportunity for comment to contiguous states and federal agencies, as appropriate;
- (e) requirements for inspection, monitoring, recordkeeping, compliance certification, and reporting;
- (f) deadlines for submitting permit applications and compliance plans that are not later than 12 months after the source becomes subject to the operating permit requirement;
- (g) deadlines for submitting permit renewal applications that are not later than 6 months before expiration of the existing operating permit;
- (h) requirements for compliance plans that must be submitted with permit and renewal applications, including schedules of compliance and progress reports;
- (i) requirements and procedures for periodic certification of source compliance with permit requirements, including the prompt reporting of any deviations from permit requirements;
- (j) requirements for submission of any plans, specifications, or other information that the department considers necessary under this section;
- (k) conditions and procedures for the transfer of operating permits;
- (l) requirements and procedures for suspension, modification, amendment, and revocation of permits by the department for cause, including the modification or amendment of permits before renewal or termination to incorporate applicable limitations or requirements effective after permit issuance;
- (m) requirements and procedures for incorporating into permits and permit renewals all applicable emission limitations and other requirements, including enforceable measures necessary to ensure compliance with those limitations and requirements;
- (n) requirements and procedures for permit modification and amendment;
- (o) procedures for tracking activities conducted under general permits;
- (p) requirements and procedures for issuing a single operating permit authorizing emissions from similar operations at multiple temporary locations, which permit may include conditions necessary to ensure compliance with the requirements of this chapter at all authorized locations and a requirement that the owner or

operator notify the department in advance of each change in location;

(q) requirements and procedures for allowing changes within a permitted facility without requiring a permit amendment if the changes are not prohibited under this chapter and do not exceed the emissions allowable under the permit; and

(r) other requirements necessary for the department to obtain the authorization to administer an operating permit program under the provisions of Subchapter V of the federal Clean Air Act."

Section 19. Section 75-2-218, MCA, is amended to read:

"75-2-218. Permits for operation -- application completeness -- action by department -- application shield -- review by ~~board~~ board. (1) An application for an operating permit or renewal is not considered filed until the department has determined that it is complete. An application is complete if all fees required under 75-2-220 and all information and completed application forms required under 75-2-217 have been submitted. A complete application must contain all ~~of~~ the information required for the department to begin processing the application. If the department fails to notify the applicant in writing within 60 days after submittal of an application that the application is incomplete and fails to list the reasons why the application is considered incomplete, the application is considered filed on the date of the department's receipt of the application. The department may request additional information after a completeness determination has been made. The ~~board~~ department shall adopt rules that contain criteria for use in determining both when an application is complete and when additional information is required after a completeness determination has been made.

(2) Except as provided in 75-1-208(4)(b) and subsection (3) of this section, the department shall, consistent with the procedures established under 75-2-217, approve or disapprove a complete application for an operating permit or renewal and shall issue or deny the permit or renewal within 18 months after the date of filing. Failure of the department to act in a timely manner does not constitute approval or denial of the application. This does not limit or abridge the right of any person to seek available judicial remedies to require the department to act in a timely manner.

(3) The ~~board~~ department may by rule provide for a transition schedule for both the submittal to the department of initial applications for operating permits by existing sources and action by the department on these initial permit applications. The ~~board~~ department may require that one-third of all operating permit

applications required for existing sources be submitted within the first calendar year after the adoption of rules implementing an operating permit program under 75-2-217.

(4) If an applicant submits a timely and complete application for an operating permit, the applicant's failure to hold a valid operating permit is not a violation of 75-2-217. If an applicant submits a timely and complete application for an operating permit renewal, the expiration of the applicant's existing operating permit is not a violation of 75-2-217. The applicant shall continue to be subject to the terms and conditions of the expired operating permit until the operating permit is renewed and is subject to the application of 75-2-217. The applicant is not entitled to the protection of this subsection if the delay in final action by the department on the application results from the applicant's failure to submit in a timely manner information requested by the department to process the application.

(5) Except as provided in subsection (8), if the department approves or denies an application for an operating permit or the renewal, modification, or amendment of a permit under 75-2-217 and this section, any person that participated in the public comment process required under 75-2-217(7) may request a hearing before the ~~board~~ board. The request for a hearing must be filed within 30 days after the department renders its decision and must include an affidavit setting forth the grounds for the request. The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing ~~before the board~~ under this subsection.

(6) (a) Except as provided in subsection (8), the department's decision on any application is not final until 30 days have elapsed from the date of the decision.

(b) Except as provided in subsection (8), the filing of a request for hearing does not stay the department's decision. However, the ~~board~~ board may order a stay upon receipt of a petition and a finding, after notice and opportunity for an informal hearing, that:

(i) the person requesting the hearing is entitled to the relief demanded in the request for a hearing; or
(ii) continuation of the permit during the appeal would produce great or irreparable injury to the person requesting the hearing.

(c) Upon granting a stay, the ~~board~~ board may require a written undertaking to be given by the party requesting the stay for the payment of costs and damages incurred by the permit applicant and its employees if the ~~board~~ board determines that the permit was properly issued. When requiring an undertaking, the ~~board~~

board shall use the same procedures and limitations as are provided in 27-19-306(2) through (4) for undertakings on injunctions.

(7) The requirements of subsections (5) and (6) also apply to any action initiated by the department to suspend, revoke, modify, or amend an operating permit issued under this section.

(8) The denial by the department of an application under 75-2-217 and this section is not subject to review by the ~~board~~ board or judicial review if the basis for denial is the written objection of the appropriate federal agency acting pursuant to the federal Clean Air Act, 42 U.S.C. 7401, et seq.

(9) Compliance with an operating permit granted or renewed under 75-2-217 and this section is considered to be compliance with the requirements of this chapter only if the permit expressly includes those requirements or an express determination that those requirements are not applicable. This subsection does not apply to general permits provided for under 75-2-217."

Section 20. Section 75-2-219, MCA, is amended to read:

"75-2-219. Permits for operation -- limitations. Sections 75-2-217 and 75-2-218 may not be construed to:

(1) affect the department's issuance of a permit for the construction, installation, alteration, or use of a source of air pollutants pursuant to 75-2-211 or 75-2-215;

(2) restrict the ~~board's~~ department's authority to adopt regulations providing for a single air quality permit system; or

(3) affect permits, allowances, phase II compliance schedules, or other acid rain provisions under Subchapter IV of the federal Clean Air Act, 42 U.S.C. 7651, et seq."

Section 21. Section 75-2-220, MCA, is amended to read:

"75-2-220. Fees -- special assessments -- late payment assessments -- credit. (1) A person required to obtain a permit or to register a facility pursuant to this chapter shall submit to the department fees set ~~by the board~~ pursuant to ~~75-2-111~~ 75-2-112 that are sufficient to cover the reasonable costs, direct and indirect, of developing and administering the permitting or registration requirements in this chapter, including:

(a) reviewing and acting upon a permit application or a registration or modifying, amending, or

updating a permit or registration;

(b) implementing and enforcing the terms and conditions of a permit issued pursuant to this chapter or an administrative rule or other regulatory requirement adopted pursuant to this chapter. This does not include any court costs or other costs associated with an enforcement action. If the permit is not issued, the department shall return this portion of the fee to the applicant.

(c) emissions and ambient monitoring;

(d) preparing generally applicable rules or guidance;

(e) modeling, analysis, and demonstrations;

(f) preparing inventories and tracking emissions;

(g) providing support to sources under the small business stationary source technical and environmental compliance assistance program; and

(h) all other costs required to be recovered pursuant to Subchapter V of the federal Clean Air Act, 42 U.S.C. 7661, et seq.

(2) For a permit or registration fee based on emissions, the fee must be based on emissions of air pollutants regulated under this chapter, including but not limited to volatile organic compounds, each air pollutant regulated under section 7411 or 7412 of the federal Clean Air Act, 42 U.S.C. 7401, et seq., and each air pollutant subject to a national primary ambient air quality standard.

(3) The ~~board~~department shall by rule provide for the annual review of all fees assessed for persons holding an operating permit issued under 75-2-217 and 75-2-218 to ensure the collection of revenue sufficient to cover the costs of administering the operating permit requirements of this chapter, as required by Subchapter V of the federal Clean Air Act.

(4) In addition to the fees required under subsection (1), the ~~board~~department may order the assessment of additional fees required to fund specific activities of the department that are directed at a particular geographic area if the legislature authorizes the activities and appropriates funds for the activities, including emissions or ambient monitoring, modeling analysis or demonstrations, and emissions inventories or tracking. Additional assessments may be levied only on those sources that are within or are believed by the department to be impacting the geographic area. Before the ~~board~~department may require the fees, it shall first determine, after opportunity for hearing, that the activities to be funded are necessary for the administration or

implementation of this chapter, that the amount of the requested fees is appropriate, that the assessments apportion the required funding in an equitable manner, and that the department has obtained the necessary appropriation. The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing before the ~~board~~department under this subsection.

(5) (a) If the permitholder or registrant fails to pay in a timely manner a fee required under subsection (1), in addition to the fee, the department may:

(i) impose a penalty not to exceed 50% of the fee, plus interest on the required fee computed as provided in 15-1-216; or

(ii) revoke the permit or registration consistent with those procedures established under this chapter for permit revocation.

(b) Within 1 year of revocation, the department may reissue the revoked permit or registration after the permitholder or registrant has paid all outstanding fees required under subsections (1) and (4), including all penalties and interest provided for under this subsection (5). In reissuing the revoked permit, the department may modify the terms and conditions of the permit as necessary to account for changes in air quality occurring since revocation.

(c) The ~~board~~department shall by rule provide for the implementation of this subsection (5), including criteria for imposition of the sanctions described in this subsection (5).

(6) The ~~board~~department may by rule allow the reduction of a fee required under this section for an operating permit or permit renewal to account for the financial resources of a category of small business stationary sources.

(7) As a condition of the continuing validity of a permit issued by the department under this chapter prior to October 1, 1993, the ~~board~~department may by rule require the permitholder to pay the fees under subsections (1) and (4).

(8) For an existing source of air pollutants that is subject to Subchapter V of the federal Clean Air Act and that is not required to hold an air quality permit from the department as of October 1, 1993, the ~~board~~department may, as a condition of continued operation, require by rule that the owner or operator of the source pay the fees under subsections (1) and (4).

(9) (a) The department shall give written notice of the fee to be assessed and the basis for the

department's fee assessment under this section to the owner or operator of the air pollutant source. The owner or operator may appeal the department's fee assessment ~~to the board~~ to the board within 20 days after receipt of the written notice.

(b) An appeal must be based upon the allegation that the fee assessment is erroneous or excessive. An appeal may not be based on the amount of the fee contained in the schedule adopted by the ~~board~~ department.

(c) If any part of the fee assessment is not appealed, it must be paid to the department upon receipt of the notice required in subsection (9)(a).

(d) The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing before the ~~board~~ board under this subsection (9).

(10) The total of the fees charged to an applicant under subsections (1) and (4) of this section must be reduced by the amount of any credit accruing to the applicant under 75-2-225. The department may not increase fee assessments beyond legislative appropriation levels to adjust for any credit claimed under 75-2-225. The credit applied under 75-2-225 may not limit the department's ability to collect fees sufficient to cover the reasonable costs, both direct and indirect, of developing and administering the permitting and registration requirements of this chapter."

Section 22. Section 75-2-221, MCA, is amended to read:

"75-2-221. Deposit of air quality permitting and registration fees. (1) All money collected by the department pursuant to ~~75-2-111~~ 75-2-112 and 75-2-220 must be deposited in an account in the state special revenue fund to be appropriated by the legislature to the department for the development and administration of the permitting and registration requirements of this chapter.

(2) Upon request, the expenditure by the department of funds in this account may be audited by a qualified auditor at the end of each fiscal year. The cost of the audit must be paid by the person requesting the audit."

Section 23. Section 75-2-231, MCA, is amended to read:

"75-2-231. Medical waste and hazardous waste incineration -- additional permit requirements.

(1) Because of the potential emission of chlorinated dioxins, furans, heavy metals, and carcinogens as a result of the incineration of medical waste and hazardous waste and the potential health risk these chemicals pose, the ~~board~~ department shall adopt rules establishing additional permit requirements for commercial medical waste and commercial hazardous waste incinerators. For the purposes of this section, the term "commercial medical waste incinerator" does not include hospital or medical facility incinerators that primarily incinerate medical waste generated onsite. The ~~board~~ department shall adopt rules that:

(a) regulate the type and amount of plastic and other materials in the medical waste stream and hazardous waste stream that may be a source of chlorine, in order to minimize the potential emission of chlorinated dioxins, furans, and carcinogens;

(b) require commercial medical waste and commercial hazardous waste incinerators to achieve the lowest achievable emission rate to prevent the public health risk from air emissions or ambient concentrations from exceeding the negligible risk standard required by 75-2-215 and any applicable federal allowable intake standards, as determined pursuant to subsection (3), for dioxins, furans, heavy metals, and other hazardous air pollutants;

(c) implement the requirements of subsection (2), including establishing procedures and standards for the collection of high-quality scientific information and for the submission of the information by the applicant;

(d) establish procedures for the monitoring, testing, and inspection of:

(i) the medical waste stream and hazardous waste stream, including heavy metals and possible precursors to the formation of chlorinated dioxins, furans, and carcinogens;

(ii) combustion, including destruction and removal efficiencies; and

(iii) emissions, including continuous emission monitoring and air pollution control devices; and

(e) are necessary to implement the provisions of this section and to coordinate the requirements under this section with the requirements contained in 75-2-211 and 75-2-215.

(2) A person who applies for an air quality permit or alteration pursuant to 75-2-211 and 75-2-215 for a commercial medical waste incinerator or commercial hazardous waste incinerator shall provide, to the satisfaction of the department, the following information:

(a) a dispersion model of emissions, using approved methods, and those studies that are necessary to identify the potential community exposure;

(b) an analysis of the potential pathways for human exposure to air contaminants, particularly chlorinated dioxins, furans, heavy metals, and other carcinogens, including the potential for inhalation, ingestion, and physical contact by the affected communities; and

(c) a quantitative analysis of the estimated total possible human exposure to chlorinated dioxins, furans, heavy metals, and carcinogens for the affected communities.

(3) The department may not issue or alter an air quality permit pursuant to this chapter until the department has determined, based upon an analysis of the information provided by the applicant pursuant to subsection (2) and other necessary and relevant data, that the public health risk from air emissions or ambient concentrations of chlorinated dioxins, furans, heavy metals, and other hazardous air pollutants will not exceed the negligible risk standard required by 75-2-215 and any applicable federal standards for allowable intake, as determined by the department after a review of established and relevant federal standards and guidelines.

(4) This section may not be construed in any way to:

(a) require the ~~board~~ department to promulgate standards for the allowable intake of any substances for which the federal government has not established standards;

(b) allow the ~~board~~ department to promulgate standards for the allowable intake of any substances for which the federal government has established standards that are more stringent than the federal standards; or

(c) limit or otherwise impair the duty of the department under 75-2-215 to determine that emissions and ambient concentrations will constitute a negligible risk as required by 75-2-215(3)(d), including emissions and ambient concentrations of dioxins, furans, heavy metals, and carcinogens, before issuing an air quality permit pursuant to 75-2-211 and 75-2-215."

Section 24. Section 75-2-234, MCA, is amended to read:

"75-2-234. Registration. The ~~board~~ department may adopt rules for the registration of certain classes of sources of air contaminants in lieu of a permit application required under 75-2-211(2)."

Section 25. Section 75-2-301, MCA, is amended to read:

"75-2-301. Local air pollution control programs -- consistency with state and federal regulations -- procedure for public notice and comment required. (1) After public hearing, a municipality or

county may establish and administer a local air pollution control program if the program is consistent with this chapter and is approved by the ~~board~~ department.

(2) If a local air pollution control program established by a county encompasses all or part of a municipality, the county and each municipality shall approve the program in accordance with subsection (1).

(3) (a) Except as provided in subsection (5), the ~~board~~ department by order may approve a local air pollution control program that:

(i) subject to subsection (4), provides by rule, ordinance, or local law for requirements compatible with, more stringent than, or more extensive than those imposed by 75-2-203, 75-2-204, 75-2-211, 75-2-212, 75-2-215, 75-2-217 through 75-2-219, and 75-2-402 and rules adopted under these sections;

(ii) provides for the enforcement of requirements established under subsection (3)(a)(i) by appropriate administrative and judicial processes; and

(iii) provides for administrative organization, staff, financial resources, and other resources necessary to effectively and efficiently carry out the program. As part of meeting these requirements, a local air pollution control program may administer the permit or registration fee provisions of 75-2-220. The permit or registration fees collected by a local air pollution control program must be deposited in a county special revenue fund to be used by the local air pollution control program for administration of local air pollution control program permitting or registration activities.

(b) ~~Board~~ Department approval of a rule, ordinance, or local law that is more stringent than the comparable state law is subject to the provisions of subsection (4).

(4) (a) A local air pollution control program may, subject to approval by the ~~board~~ department, adopt a rule, ordinance, or local law to implement this chapter that is more stringent than comparable state or federal regulations or guidelines only if:

(i) a public hearing is held;

(ii) public comment is allowed; and

(iii) the ~~board~~ department or the local air pollution control program makes a written finding after the public hearing and comment period that is based on evidence in the record that the proposed local standard or requirement:

(A) protects public health or the environment of the area;

- (B) can mitigate harm to the public health or the environment; and
- (C) is achievable with current technology.

(b) The written finding required under subsection (4)(a)(iii) must reference information and peer-reviewed scientific studies contained in the record that form the basis for the ~~board's~~ department's or the local air pollution control program's conclusion. The written finding must also include information from the hearing record regarding costs to the regulated community that are directly attributable to the proposed local standard or requirement.

(c) (i) A person or entity affected by a rule, ordinance, or local law approved or adopted after January 1, 1996, and before May 1, 2001, that the person or entity believes is more stringent than comparable state or federal regulations or guidelines may petition the ~~board~~ department or the local air pollution control program to review the rule, ordinance, or local law.

(ii) If the ~~board~~ department or local air pollution control program determines that the rule, ordinance, or local law is more stringent than state or federal regulations or guidelines, the ~~board~~ department or local air pollution control program shall either revise the rule, ordinance, or local law to conform to the state or federal regulations or guidelines or follow the process provided in subsections (4)(a) and (4)(b) within a reasonable period of time, not to exceed 6 months after receiving the petition.

(5) Except for those emergency powers provided for in 75-2-402, the ~~board~~ department may not delegate to a local air pollution control program the authority to control any air pollutant source that:

- (a) requires the preparation of an environmental impact statement in accordance with Title 75, chapter 1, part 2;
- (b) is subject to regulation under the Montana Major Facility Siting Act, as provided in Title 75, chapter 20; or
- (c) has the potential to emit 250 tons a year or more of any pollutant subject to regulation under this chapter, including fugitive emissions, unless the authority to control the source was delegated to a local air pollution control program prior to January 1, 1991.

(6) If the ~~board~~ department finds that the location, character, or extent of particular concentrations of population, air pollutant sources, or geographic, topographic, or meteorological considerations or any combination of these makes impracticable the maintenance of appropriate levels of air quality without an

areawide air pollution control program, the ~~board~~department may determine the boundaries within which the program is necessary and require it as the only acceptable alternative to direct state administration.

(7) If the ~~board~~department has reason to believe that any part of an air pollution control program in force under this section is either inadequate to prevent and control air pollution in the jurisdiction to which the program relates or is being administered in a manner inconsistent with this chapter, the ~~board~~department shall, on notice, conduct a hearing on the matter.

(8) If, after the hearing, the ~~board~~department determines that any part of the program is inadequate to prevent and control air pollution in the jurisdiction to which it relates or that it is not accomplishing the purposes of this chapter, it shall require that necessary corrective measures be taken within a reasonable time, not to exceed 60 days.

(9) If the jurisdiction fails to take these measures within the time required, the department shall administer within that jurisdiction all of the provisions of this chapter, including the terms contained in any applicable ~~board~~department order, that are necessary to correct the deficiencies found by the ~~board~~department. The department's control program supersedes all municipal or county air pollution laws, rules, ordinances, and requirements in the affected jurisdiction. The cost of the department's action is a charge on the jurisdiction.

(10) If the ~~board~~department finds that the control of a particular air pollutant source because of its complexity or magnitude is beyond the reasonable capability of the local jurisdiction or may be more efficiently and economically performed at the state level, it may ~~direct the department to~~ assume and retain control over that air pollutant source. A charge may not be assessed against the jurisdiction. Findings made under this subsection may be either on the basis of the nature of the sources involved or on the basis of their relationship to the size of the communities in which they are located.

(11) A jurisdiction in which the department administers all or part of its air pollution control program under subsection (9) may, ~~with the approval of the board,~~ establish or resume an air pollution control program that meets the requirements of subsection (3).

(12) A municipality or county may administer all or part of its air pollution control program in cooperation with one or more municipalities or counties of this state or of other states.

(13) Local air pollution control programs established under this section shall provide procedures for

public notice, public hearing, public comment, and appeal for any proposed new or revised rules, ordinances, or local laws adopted pursuant to this section. The procedures must comply with the following requirements:

(a) The local air pollution control program shall create and maintain a list of interested persons who wish to be informed of actions related to rules, ordinances, or local laws adopted by the local air pollution control program.

(b) At least 30 days prior to the adoption, revision, or repeal of a rule, ordinance, or law, the local air pollution control program shall give written notice of its intended action.

(c) The notice required under subsection (13)(b) must include:

(i) a statement of the terms or substance of the intended action or a description of the subjects and issues affected by the intended action;

(ii) an explanation of the procedure for a person to be included on the list of interested persons established pursuant to subsection (13)(a);

(iii) an explanation of the procedures and deadlines for presentation of oral or written comments related to the intended action;

(iv) an explanation of the process for requesting a public hearing as provided in subsection (13)(f); and

(v) the rationale for the intended action. The rationale must:

(A) include an explanation of why the intended action is reasonably necessary to implement the goals and purposes of the local air pollution control program;

(B) specifically address those intended actions for which there are no similar state or federal regulations or guidelines; and

(C) be written in plain, easily understood language.

(d) For the purposes of subsection (13)(c)(v), a statement of authority to adopt a rule, ordinance, or local law does not, standing alone, constitute a showing of reasonable necessity for the intended action.

(e) The local air pollution control program shall mail a copy of the proposed rule, ordinance, or local law to all interested persons on the list established pursuant to subsection (13)(a) who have made timely requests to be included on the list.

(f) If at least 10 of the persons who will be directly affected by the proposed rule, ordinance, or local law request a public hearing, the local air pollution control program shall hold a hearing to hear comments from

the public on the intended action.

(g) The local air pollution control program shall prepare a written response to all comments submitted in writing or presented at the public hearing for consideration prior to adoption, revision, or repeal of the proposed rule, ordinance, or local law.

(h) A person who submits a written comment on a proposed action or who attends a public hearing in regard to a proposed action must be informed of the final action."

Section 26. Section 75-2-302, MCA, is amended to read:

"75-2-302. State and federal aid. (1) Any local air pollution control program meeting the requirements of this chapter and rules made pursuant ~~thereto shall be~~ to this chapter is eligible for state aid in an amount up to 30% of the locally funded annual operating cost ~~thereof of the program.~~

(2) Federal aid granted to the state for developing or maintaining a local air pollution control program that is subsequently granted to a local program is not considered state aid.

(3) Subdivisions of the state may make application for, receive, administer, and expend any federal aid for the control of air pollution or the development and administration of programs related to air pollution control, provided the program is currently approved by the ~~board~~ department under 75-2-301."

Section 27. Section 75-2-422, MCA, is amended to read:

"75-2-422. Amount of noncompliance penalty -- late charge. (1) The amount of the penalty ~~which that shall be~~ is assessed and collected with respect to any source under 75-2-421 through 75-2-429 ~~shall must~~ be equal to:

(a) the amount determined in accordance with the rules adopted by the ~~board~~ department, which ~~shall must~~ be no less than the economic value ~~which that~~ a delay in compliance after July 1, 1979, may have for the owner of ~~such the~~ source, including the quarterly equivalent of the capital costs of compliance and debt service over a normal amortization period not to exceed 10 years, operation and maintenance costs foregone as a result of noncompliance, and any additional economic value ~~which such a that the~~ delay may have for the owner or operator of such source; minus

(b) the amount of any expenditure made by the owner or operator of that source during ~~any such the~~

quarter for the purpose of bringing that source into and maintaining compliance with ~~such the~~ requirement, to the extent that ~~such the~~ expenditures have not been taken into account in the calculation of the penalty under subsection (1)(a).

(2) To the extent that any expenditure under subsection (1)(b) made during any quarter is not subtracted for ~~such the~~ quarter from the costs under subsection (1)(a), ~~such the~~ expenditure may be subtracted for any subsequent quarter from ~~such the~~ costs. In no event may the amount paid be less than the quarterly payment minus the amount attributed to actual cost of construction.

(3) If the owner or operator of any stationary source to whom notice is issued under 75-2-425 does not submit a timely petition under 75-2-425(2)(b) or submits a petition ~~which that~~ is denied and if the owner or operator fails to submit a calculation of the penalty assessment, a schedule for payment, and the information necessary for independent verification thereof, the department may enter into a contract with any person who has no financial interest in the matter to assist in determining the amount of the penalty assessment or payment schedule with respect to ~~such the~~ source. The cost of carrying out ~~such the~~ contract may be added to the penalty to be assessed against the owner or operator of ~~such the~~ source.

(4) Any person who fails to pay the amount of any penalty with respect to any source under 75-2-421 through 75-2-429 on a timely basis shall ~~be required to pay~~ in addition a quarterly nonpayment penalty for each quarter during which ~~such the~~ failure to pay persists. ~~Such The~~ nonpayment penalty ~~shall be~~ is equal to 20% of the aggregate amount of ~~such the~~ person's penalties and nonpayment penalties with respect to ~~such the~~ source ~~which that~~ are unpaid as of the beginning of ~~such the~~ quarter."

Section 28. Section 75-2-428, MCA, is amended to read:

"75-2-428. Effect of new standards on noncompliance penalty. In the case of any emission limitation, emission standard, or other requirement approved or adopted by the ~~board~~ department under this chapter after July 1, 1979, and approved by the federal environmental protection agency as an amendment to the state implementation plan, which is more stringent than the emission limitation or requirement for the source in effect prior to such approval or promulgation, if any, or where there was no emission limitation, emission standard, or other requirement approved or adopted before July 1, 1979, the date for imposition of the noncompliance penalty under 75-2-421 through 75-2-429 shall be the date on which the source is required to

be in full compliance with such emission limitation, emission standard, or other requirement or 3 years after the approval or promulgation of such emission limitation or requirement, whichever is sooner."

Section 29. Section 75-5-103, MCA, is amended to read:

"75-5-103. (Temporary) Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

- (1) "Associated supporting infrastructure" means:
 - (a) electric transmission and distribution facilities;
 - (b) pipeline facilities;
 - (c) aboveground ponds and reservoirs and underground storage reservoirs;
 - (d) rail transportation;
 - (e) aqueducts and diversion dams;
 - (f) devices or equipment associated with the delivery of an energy form or product produced at an energy development project; or
 - (g) other supporting infrastructure, as defined by ~~board~~ department rule, that is necessary for an energy development project.
- (2) (a) "Base numeric nutrient standards" means numeric water quality criteria for nutrients in surface water that are adopted to protect the designated uses of a surface water body.
- (b) The term does not include numeric water quality standards for nitrate, nitrate plus nitrite, or nitrite that are adopted to protect human health.
- ~~(3) "Board" means the board of environmental review provided for in 2-15-3502.~~
- (3) "Board" means the board of environmental review provided for in 2-15-3502.
- ~~(4)(4)~~ "Contamination" means impairment of the quality of state waters by sewage, industrial wastes, or other wastes, creating a hazard to human health.
- ~~(5)(5)~~ "Council" means the water pollution control advisory council provided for in 2-15-2107.
- ~~(6)(6)~~ (a) "Currently available data" means data that is readily available to the department at the time a decision is made, including information supporting its previous lists of water bodies that are threatened or impaired.

(b) The term does not mean new data to be obtained as a result of department efforts.

~~(7)~~(7) "Degradation" means a change in water quality that lowers the quality of high-quality waters for a parameter. The term does not include those changes in water quality determined to be nonsignificant pursuant to 75-5-301(5)(c).

~~(8)~~(8) "Department" means the department of environmental quality provided for in 2-15-3501.

~~(9)~~(9) "Disposal system" means a system for disposing of sewage, industrial, or other wastes and includes sewage systems and treatment works.

~~(10)~~(10) "Effluent standard" means a restriction or prohibition on quantities, rates, and concentrations of chemical, physical, biological, and other constituents that are discharged into state waters.

~~(11)~~(11) (a) "Energy development project" means each plant, unit, or other development and associated developments, including any associated supporting infrastructure, designed for or capable of:

- (i) generating electricity;
- (ii) producing gas derived from coal;
- (iii) producing liquid hydrocarbon products;
- (iv) refining crude oil or natural gas;
- (v) producing alcohol to be blended for ethanol-blended gasoline and that are eligible for a tax incentive pursuant to Title 15, chapter 70, part 5;
- (vi) producing biodiesel and that are eligible for a tax incentive for the production of biodiesel pursuant to 15-32-701; or
- (vii) transmitting electricity through an electric transmission line with a design capacity of equal to or greater than 50 kilovolts.

(b) The term does not include a nuclear facility as defined in 75-20-1202.

~~(12)~~(12) "Existing uses" means those uses actually attained in state waters on or after July 1, 1971, whether or not those uses are included in the water quality standards.

~~(13)~~(13) "High-quality waters" means all state waters, except:

(a) ground water classified as of January 1, 1995, within the "III" or "IV" classifications established by the ~~board's~~ department's classification rules; and

(b) surface waters that:

- (i) are not capable of supporting any one of the designated uses for their classification; or
- (ii) have zero flow or surface expression for more than 270 days during most years.

~~(14)~~(14) "Impaired water body" means a water body or stream segment for which sufficient credible data shows that the water body or stream segment is failing to achieve compliance with applicable water quality standards.

~~(15)~~(15) "Industrial waste" means a waste substance from the process of business or industry or from the development of any natural resource, together with any sewage that may be present.

~~(16)~~(16) "Interested person" means a person who has a real property interest, a water right, or an economic interest that is or may be directly and adversely affected by the department's preliminary decision regarding degradation of state waters, pursuant to 75-5-303. The term includes a person who has requested authorization to degrade high-quality waters.

~~(17)~~(17) "Load allocation" means the portion of a receiving water's loading capacity that is allocated to one of its existing or future nonpoint sources or to natural background sources.

~~(18)~~(18) "Loading capacity" means the mass of a pollutant that a water body can assimilate without a violation of water quality standards. For pollutants that cannot be measured in terms of mass, it means the maximum change that can occur from the best practicable condition in a surface water without causing a violation of the surface water quality standards.

~~(19)~~(19) "Local department of health" means the staff, including health officers, employed by a county, city, city-county, or district board of health.

~~(20)~~(20) "Metal parameters" includes but is not limited to aluminum, antimony, arsenic, beryllium, barium, cadmium, chromium, copper, fluoride, iron, lead, manganese, mercury, nickel, selenium, silver, thallium, and zinc.

~~(21)~~(21) "Mixing zone" means an area established in a permit or final decision on nondegradation issued by the department where water quality standards may be exceeded, subject to conditions that are imposed by the department and that are consistent with the rules adopted by the ~~board~~ department.

~~(22)~~(22) "Nutrient standards variance" means numeric water quality criteria for nutrients based on a determination that base numeric nutrient standards cannot be achieved because of economic impacts or because of the limits of technology. The term includes individual, general, and alternative nutrient standards

variances in accordance with 75-5-313.

~~(23)~~(23) "Nutrient work group" means an advisory work group, convened by the department, representing publicly owned and privately owned point sources of pollution, nonpoint sources of pollution, and other interested parties that will advise the department on the base numeric nutrient standards, the development of nutrient standards variances, and the implementation of those standards and variances together with associated economic impacts.

~~(24)~~(24) "Other wastes" means garbage, municipal refuse, decayed wood, sawdust, shavings, bark, lime, sand, ashes, offal, night soil, oil, grease, tar, heat, chemicals, dead animals, sediment, wrecked or discarded equipment, radioactive materials, solid waste, and all other substances that may pollute state waters.

~~(25)~~(25) "Outstanding resource waters" means:

(a) state surface waters located wholly within the boundaries of areas designated as national parks or national wilderness areas as of October 1, 1995; or

(b) other surface waters or ground waters classified by the ~~board~~department under the provisions of 75-5-316 and approved by the legislature.

~~(26)~~(26) "Owner or operator" means a person who owns, leases, operates, controls, or supervises a point source.

~~(27)~~(27) "Parameter" means a physical, biological, or chemical property of state water when a value of that property affects the quality of the state water.

~~(28)~~(28) "Person" means the state, a political subdivision of the state, institution, firm, corporation, partnership, individual, or other entity and includes persons resident in Canada.

~~(29)~~(29) "Point source" means a discernible, confined, and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, or vessel or other floating craft, from which pollutants are or may be discharged.

~~(30)~~(30) (a) "Pollution" means:

(i) contamination or other alteration of the physical, chemical, or biological properties of state waters that exceeds that permitted by Montana water quality standards, including but not limited to standards relating to change in temperature, taste, color, turbidity, or odor; or

(ii) the discharge, seepage, drainage, infiltration, or flow of liquid, gaseous, solid, radioactive, or other

substance into state water that will or is likely to create a nuisance or render the waters harmful, detrimental, or injurious to public health, recreation, safety, or welfare, to livestock, or to wild animals, birds, fish, or other wildlife.

(b) The term does not include:

(i) a discharge, seepage, drainage, infiltration, or flow that is authorized under the pollution discharge permit rules adopted by the ~~board~~ department under this chapter;

(ii) activities conducted under this chapter that comply with the conditions imposed by the department in short-term authorizations pursuant to 75-5-308;

(iii) contamination of ground water within the boundaries of an underground mine using in situ coal gasification and operating in accordance with a permit issued under 82-4-221.

(c) Contamination referred to in subsection ~~(30)(b)(iii) and (30)(b)(iv)~~ (30)(b)(iii) and (30)(b)(iv) does not require a mixing zone.

~~(31)~~(31) "Sewage" means water-carried waste products from residences, public buildings, institutions, or other buildings, including discharge from human beings or animals, together with ground water infiltration and surface water present.

~~(32)~~(32) "Sewage system" means a device for collecting or conducting sewage, industrial wastes, or other wastes to an ultimate disposal point.

~~(33)~~(33) "Standard of performance" means a standard adopted by the ~~board~~ department for the control of the discharge of pollutants that reflects the greatest degree of effluent reduction achievable through application of the best available demonstrated control technology, processes, operating methods, or other alternatives, including, when practicable, a standard permitting no discharge of pollutants.

~~(34)~~(34) (a) "State waters" means a body of water, irrigation system, or drainage system, either surface or underground.

(b) The term does not apply to:

(i) ponds or lagoons used solely for treating, transporting, or impounding pollutants; or

(ii) irrigation waters or land application disposal waters when the waters are used up within the irrigation or land application disposal system and the waters are not returned to state waters.

~~(35)~~(35) "Sufficient credible data" means chemical, physical, or biological monitoring data, alone or in

combination with narrative information, that supports a finding as to whether a water body is achieving compliance with applicable water quality standards.

~~(36)~~(36) "Threatened water body" means a water body or stream segment for which sufficient credible data and calculated increases in loads show that the water body or stream segment is fully supporting its designated uses but threatened for a particular designated use because of:

- (a) proposed sources that are not subject to pollution prevention or control actions required by a discharge permit, the nondegradation provisions, or reasonable land, soil, and water conservation practices; or
- (b) documented adverse pollution trends.

~~(37)~~(37) "Total maximum daily load" or "TMDL" means the sum of the individual waste load allocations for point sources and load allocations for both nonpoint sources and natural background sources established at a level necessary to achieve compliance with applicable surface water quality standards.

~~(38)~~(38) "Treatment works" means works, including sewage lagoons, installed for treating or holding sewage, industrial wastes, or other wastes.

~~(39)~~(39) "Waste load allocation" means the portion of a receiving water's loading capacity that is allocated to one of its existing or future point sources.

~~(40)~~(40) "Water quality protection practices" means those activities, prohibitions, maintenance procedures, or other management practices applied to point and nonpoint sources designed to protect, maintain, and improve the quality of state waters. Water quality protection practices include but are not limited to treatment requirements, standards of performance, effluent standards, and operating procedures and practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from material storage.

~~(41)~~(41) "Water well" means an excavation that is drilled, cored, bored, washed, driven, dug, jetted, or otherwise constructed and intended for the location, diversion, artificial recharge, or acquisition of ground water.

~~(42)~~(42) "Watershed advisory group" means a group of individuals who wish to participate in an advisory capacity in revising and reprioritizing the list of water bodies developed under 75-5-702 and in the development of TMDLs under 75-5-703, including those groups or individuals requested by the department to participate in an advisory capacity as provided in 75-5-704.

75-5-103. (Effective on occurrence of contingency) Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Associated supporting infrastructure" means:

(a) electric transmission and distribution facilities;

(b) pipeline facilities;

(c) aboveground ponds and reservoirs and underground storage reservoirs;

(d) rail transportation;

(e) aqueducts and diversion dams;

(f) devices or equipment associated with the delivery of an energy form or product produced at an energy development project; or

(g) other supporting infrastructure, as defined by ~~board~~ department rule, that is necessary for an energy development project.

(2) (a) "Base numeric nutrient standards" means numeric water quality criteria for nutrients in surface water that are adopted to protect the designated uses of a surface water body.

(b) The term does not include numeric water quality standards for nitrate, nitrate plus nitrite, or nitrite that are adopted to protect human health.

~~(3) "Board" means the board of environmental review provided for in 2-15-3502.~~

(3) "Board" means the board of environmental review provided for in 2-15-3502.

~~(4)~~(4) "Contamination" means impairment of the quality of state waters by sewage, industrial wastes, or other wastes, creating a hazard to human health.

~~(5)~~(5) "Council" means the water pollution control advisory council provided for in 2-15-2107.

~~(6)~~(6) (a) "Currently available data" means data that is readily available to the department at the time a decision is made, including information supporting its previous lists of water bodies that are threatened or impaired.

(b) The term does not mean new data to be obtained as a result of department efforts.

~~(7)~~(7) "Degradation" means a change in water quality that lowers the quality of high-quality waters for a parameter. The term does not include those changes in water quality determined to be nonsignificant pursuant to 75-5-301(5)(c).

~~(8)~~(8) "Department" means the department of environmental quality provided for in 2-15-3501.

~~(9)~~(9) "Disposal system" means a system for disposing of sewage, industrial, or other wastes and

includes sewage systems and treatment works.

~~(10)~~(10) "Effluent standard" means a restriction or prohibition on quantities, rates, and concentrations of chemical, physical, biological, and other constituents that are discharged into state waters.

~~(11)~~(11) (a) "Energy development project" means each plant, unit, or other development and associated developments, including any associated supporting infrastructure, designed for or capable of:

- (i) generating electricity;
- (ii) producing gas derived from coal;
- (iii) producing liquid hydrocarbon products;
- (iv) refining crude oil or natural gas;
- (v) producing alcohol to be blended for ethanol-blended gasoline and that are eligible for a tax incentive pursuant to Title 15, chapter 70, part 5;
- (vi) producing biodiesel and that are eligible for a tax incentive for the production of biodiesel pursuant to 15-32-701; or
- (vii) transmitting electricity through an electric transmission line with a design capacity of equal to or greater than 50 kilovolts.

(b) The term does not include a nuclear facility as defined in 75-20-1202.

~~(12)~~(12) "Existing uses" means those uses actually attained in state waters on or after July 1, 1971, whether or not those uses are included in the water quality standards.

~~(13)~~(13) "High-quality waters" means all state waters, except:

(a) ground water classified as of January 1, 1995, within the "III" or "IV" classifications established by the ~~board's~~ department's classification rules; and

(b) surface waters that:

- (i) are not capable of supporting any one of the designated uses for their classification; or
- (ii) have zero flow or surface expression for more than 270 days during most years.

~~(14)~~(14) "Impaired water body" means a water body or stream segment for which sufficient credible data shows that the water body or stream segment is failing to achieve compliance with applicable water quality standards.

~~(15)~~(15) "Industrial waste" means a waste substance from the process of business or industry or from

the development of any natural resource, together with any sewage that may be present.

~~(16)~~(16) "Interested person" means a person who has a real property interest, a water right, or an economic interest that is or may be directly and adversely affected by the department's preliminary decision regarding degradation of state waters, pursuant to 75-5-303. The term includes a person who has requested authorization to degrade high-quality waters.

~~(17)~~(17) "Load allocation" means the portion of a receiving water's loading capacity that is allocated to one of its existing or future nonpoint sources or to natural background sources.

~~(18)~~(18) "Loading capacity" means the mass of a pollutant that a water body can assimilate without a violation of water quality standards. For pollutants that cannot be measured in terms of mass, it means the maximum change that can occur from the best practicable condition in a surface water without causing a violation of the surface water quality standards.

~~(19)~~(19) "Local department of health" means the staff, including health officers, employed by a county, city, city-county, or district board of health.

~~(20)~~(20) "Metal parameters" includes but is not limited to aluminum, antimony, arsenic, beryllium, barium, cadmium, chromium, copper, fluoride, iron, lead, manganese, mercury, nickel, selenium, silver, thallium, and zinc.

~~(21)~~(21) "Mixing zone" means an area established in a permit or final decision on nondegradation issued by the department where water quality standards may be exceeded, subject to conditions that are imposed by the department and that are consistent with the rules adopted by the ~~board~~ department.

~~(22)~~(22) "Nutrient standards variance" means numeric water quality criteria for nutrients based on a determination that base numeric nutrient standards cannot be achieved because of economic impacts or because of the limits of technology. The term includes individual, general, and alternative nutrient standards variances in accordance with 75-5-313.

~~(23)~~(23) "Nutrient work group" means an advisory work group, convened by the department, representing publicly owned and privately owned point sources of pollution, nonpoint sources of pollution, and other interested parties that will advise the department on the base numeric nutrient standards, the development of nutrient standards variances, and the implementation of those standards and variances together with associated economic impacts.

~~(24)~~(24) "Other wastes" means garbage, municipal refuse, decayed wood, sawdust, shavings, bark, lime, sand, ashes, offal, night soil, oil, grease, tar, heat, chemicals, dead animals, sediment, wrecked or discarded equipment, radioactive materials, solid waste, and all other substances that may pollute state waters.

~~(25)~~(25) "Outstanding resource waters" means:

(a) state surface waters located wholly within the boundaries of areas designated as national parks or national wilderness areas as of October 1, 1995; or

(b) other surface waters or ground waters classified by the ~~board~~department under the provisions of 75-5-316 and approved by the legislature.

~~(26)~~(26) "Owner or operator" means a person who owns, leases, operates, controls, or supervises a point source.

~~(27)~~(27) "Parameter" means a physical, biological, or chemical property of state water when a value of that property affects the quality of the state water.

~~(28)~~(28) "Person" means the state, a political subdivision of the state, institution, firm, corporation, partnership, individual, or other entity and includes persons resident in Canada.

~~(29)~~(29) "Point source" means a discernible, confined, and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, or vessel or other floating craft, from which pollutants are or may be discharged.

~~(30)~~(30) (a) "Pollution" means:

(i) contamination or other alteration of the physical, chemical, or biological properties of state waters that exceeds that permitted by Montana water quality standards, including but not limited to standards relating to change in temperature, taste, color, turbidity, or odor; or

(ii) the discharge, seepage, drainage, infiltration, or flow of liquid, gaseous, solid, radioactive, or other substance into state water that will or is likely to create a nuisance or render the waters harmful, detrimental, or injurious to public health, recreation, safety, or welfare, to livestock, or to wild animals, birds, fish, or other wildlife.

(b) The term does not include:

(i) a discharge, seepage, drainage, infiltration, or flow that is authorized under the pollution discharge permit rules adopted by the ~~board~~department under this chapter;

(ii) activities conducted under this chapter that comply with the conditions imposed by the department in short-term authorizations pursuant to 75-5-308;

(iii) contamination of ground water within the boundaries of a geologic storage reservoir, as defined in 82-11-101, by a carbon dioxide injection well in accordance with a permit issued pursuant to Title 82, chapter 11, part 1;

(iv) contamination of ground water within the boundaries of an underground mine using in situ coal gasification and operating in accordance with a permit issued under 82-4-221;

(c) Contamination referred to in subsections ~~(30)(b)(iii) and (30)(b)(iv)~~ (30)(b)(iii) and (30)(b)(iv) does not require a mixing zone.

~~(31)~~(31) "Sewage" means water-carried waste products from residences, public buildings, institutions, or other buildings, including discharge from human beings or animals, together with ground water infiltration and surface water present.

~~(32)~~(32) "Sewage system" means a device for collecting or conducting sewage, industrial wastes, or other wastes to an ultimate disposal point.

~~(33)~~(33) "Standard of performance" means a standard adopted by the ~~board~~ department for the control of the discharge of pollutants that reflects the greatest degree of effluent reduction achievable through application of the best available demonstrated control technology, processes, operating methods, or other alternatives, including, when practicable, a standard permitting no discharge of pollutants.

~~(34)~~(34) (a) "State waters" means a body of water, irrigation system, or drainage system, either surface or underground.

(b) The term does not apply to:

- (i) ponds or lagoons used solely for treating, transporting, or impounding pollutants; or
- (ii) irrigation waters or land application disposal waters when the waters are used up within the irrigation or land application disposal system and the waters are not returned to state waters.

~~(35)~~(35) "Sufficient credible data" means chemical, physical, or biological monitoring data, alone or in combination with narrative information, that supports a finding as to whether a water body is achieving compliance with applicable water quality standards.

~~(36)~~(36) "Threatened water body" means a water body or stream segment for which sufficient credible

data and calculated increases in loads show that the water body or stream segment is fully supporting its designated uses but threatened for a particular designated use because of:

- (a) proposed sources that are not subject to pollution prevention or control actions required by a discharge permit, the nondegradation provisions, or reasonable land, soil, and water conservation practices; or
- (b) documented adverse pollution trends.

~~(37)~~(37) "Total maximum daily load" or "TMDL" means the sum of the individual waste load allocations for point sources and load allocations for both nonpoint sources and natural background sources established at a level necessary to achieve compliance with applicable surface water quality standards.

~~(38)~~(38) "Treatment works" means works, including sewage lagoons, installed for treating or holding sewage, industrial wastes, or other wastes.

~~(39)~~(39) "Waste load allocation" means the portion of a receiving water's loading capacity that is allocated to one of its existing or future point sources.

~~(40)~~(40) "Water quality protection practices" means those activities, prohibitions, maintenance procedures, or other management practices applied to point and nonpoint sources designed to protect, maintain, and improve the quality of state waters. Water quality protection practices include but are not limited to treatment requirements, standards of performance, effluent standards, and operating procedures and practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from material storage.

~~(41)~~(41) "Water well" means an excavation that is drilled, cored, bored, washed, driven, dug, jetted, or otherwise constructed and intended for the location, diversion, artificial recharge, or acquisition of ground water.

~~(42)~~(42) "Watershed advisory group" means a group of individuals who wish to participate in an advisory capacity in revising and reprioritizing the list of water bodies developed under 75-5-702 and in the development of TMDLs under 75-5-703, including those groups or individuals requested by the department to participate in an advisory capacity as provided in 75-5-704."

Section 30. Section 75-5-106, MCA, is amended to read:

"75-5-106. Interagency cooperation -- enforcement authorization. (1) The council, ~~board~~, ~~board~~, and the department may require the use of records of all state agencies and may seek the assistance of the agencies. When the department's review of a permit application submitted under another chapter or title is

required or requested, the department shall coordinate the review under this chapter with the review conducted by the agency or unit under the other chapter, following the time schedule for that review. State, county, and municipal officers and employees, including sanitarians and other employees of local departments of health, shall cooperate with the council, ~~board~~, ~~board~~, and the department in furthering the purposes of this chapter, so far as is practicable and consistent with their other duties.

(2) The department may authorize a local water quality district established according to the provisions of Title 7, chapter 13, part 45, to enforce the provisions of this chapter and rules adopted under this chapter on a case-by-case basis. If a local water quality district requests the authorization, the local water quality district shall present appropriate documentation to the department that a person is violating permit requirements established by the department or may be causing pollution, as defined in 75-5-103, of state waters or placing or causing to be placed wastes in a location where they are likely to cause pollution of state waters. The ~~board~~ department may adopt rules regarding the granting of enforcement authority to local water quality districts."

Section 31. Section 75-5-201, MCA, is amended to read:

"75-5-201. ~~Board rules~~ Rules authorized. (1) (a) The ~~board~~ department shall, except as provided in 75-5-411 and subject to the provisions of 75-5-203, adopt rules for the administration of this chapter.

(b) The ~~board~~ department shall adopt rules that describe the location and the times of the year when suction dredging is permissible. These rules may be adopted only after consultation with the local conservation districts in the areas subject to the rule.

(2) The ~~board's~~ department's rules may include a fee schedule or system for assessment of administrative penalties as provided under 75-5-611."

Section 32. Section 75-5-203, MCA, is amended to read:

"75-5-203. State regulations no more stringent than federal regulations or guidelines. (1) Except as provided in subsections (2) through (5) or unless required by state law, the ~~board~~ department may not adopt a rule to implement 75-5-301, 75-5-302, 75-5-303, or 75-5-310 that is more stringent than the comparable federal regulations or guidelines that address the same circumstances. The ~~board~~ department may incorporate by reference comparable federal regulations or guidelines.

(2) The ~~board-department~~ may adopt a rule to implement this chapter that is more stringent than comparable federal regulations or guidelines only if the ~~board-department~~ makes a written finding after a public hearing and public comment and based on evidence in the record that:

(a) the proposed state standard or requirement protects public health or the environment of the state; and

(b) the state standard or requirement to be imposed can mitigate harm to the public health or environment and is achievable under current technology.

(3) The written finding must reference pertinent, ascertainable, and peer-reviewed scientific studies contained in the record that forms the basis for the ~~board's-department's~~ conclusion. The written finding must also include information from the hearing record regarding the costs to the regulated community that are directly attributable to the proposed state standard or requirement.

(4) (a) A person affected by a rule ~~of the board that~~ that the person believes to be more stringent than comparable federal regulations or guidelines may petition the ~~board-board~~ to review the rule. If the ~~board-board~~ determines that the rule is more stringent than comparable federal regulations or guidelines, the ~~board-department~~ shall comply with this section by either revising the rule to conform to the federal regulations or guidelines or by making the written finding, as provided under subsection (2), within a reasonable period of time, not to exceed 8 months after receiving the petition. A petition under this section does not relieve the petitioner of the duty to comply with the challenged rule. The ~~board-department~~ may charge a petition filing fee in an amount not to exceed \$250.

(b) A person may also petition the ~~board-board~~ for a rule review under subsection (4)(a) if the ~~board-department~~ adopts a rule in an area in which no federal regulations or guidelines existed and the federal government subsequently establishes comparable regulations or guidelines that are less stringent than the previously adopted ~~board-department~~ rule.

(5) This section does not apply to a rule adopted under the emergency rulemaking provisions of 2-4-303(1)."

Section 33. Section 75-5-222, MCA, is amended to read:

"75-5-222. State regulation for natural conditions. (1) The department may not apply a standard to

a water body for water quality that is more stringent than the nonanthropogenic condition of the water body. For the parameters for which the applicable standards are more stringent than the nonanthropogenic condition, the standard is the nonanthropogenic condition of the parameter in the water body. The department shall implement the standard in a manner that provides for the water quality standards for downstream waters to be attained and maintained.

(2) (a) For water bodies where the standard is more stringent than the condition of the water body but subsection (1) is not applicable, the ~~board~~-department shall adopt rules consistent with comparable federal rules and guidelines providing criteria and procedures for the department to issue variances from standards if:

(i) the condition cannot reasonably be expected to be remediated during the permit term for which the application for variance has been received; and

(ii) the discharge to which the variance applies would not materially contribute to the condition.

(b) A variance issued pursuant to subsection (2)(a) must be reviewed every 5 years and may be modified or terminated as a result of the review."

Section 34. Section 75-5-301, MCA, is amended to read:

"75-5-301. Classification and standards for state waters. Consistent with the provisions of 80-15-201 and this chapter, the ~~board~~-department shall:

(1) establish the classification of all state waters in accordance with their present and future most beneficial uses, creating an appropriate classification for streams that, due to sporadic flow, do not support an aquatic ecosystem that includes salmonid or nonsalmonid fish;

(2) formulate and adopt standards of water quality, ~~giving consideration to~~ considering the economics of waste treatment and prevention. When rules are adopted regarding temporary standards, they must conform with the requirements of 75-5-312. Standards ~~adopted by the board~~ must meet the following requirements:

(a) for carcinogens, the water quality standard for protection of human health must be the value associated with an excess lifetime cancer risk level, assuming continuous lifetime exposure, not to exceed 1×10^{-3} in the case of arsenic and 1×10^{-5} for other carcinogens. However, if a standard established at a risk level of 1×10^{-3} for arsenic or 1×10^{-5} for other carcinogens violates the maximum contaminant level obtained from 40 CFR, part 141, then the maximum contaminant level must be adopted as the standard for that carcinogen.

- (b) standards for the protection of aquatic life do not apply to ground water.
- (3) review, from time to time at intervals of not more than 3 years and, to the extent permitted by this chapter, revise established classifications of waters and adopted standards of water quality;
- (4) adopt rules governing the granting of mixing zones, requiring that mixing zones granted by the department be specifically identified and requiring that mixing zones have:
 - (a) the smallest practicable size;
 - (b) a minimum practicable effect on water uses; and
 - (c) definable boundaries;
- (5) adopt rules implementing the nondegradation policy established in 75-5-303, including but not limited to rules that:
 - (a) provide a procedure for department review and authorization of degradation;
 - (b) establish criteria for the following:
 - (i) determining important economic or social development; and
 - (ii) weighing the social and economic importance to the public of allowing the proposed project against the cost to society associated with a loss of water quality;
 - (c) establish criteria for determining whether a proposed activity or class of activities, in addition to those activities identified in 75-5-317, will result in nonsignificant changes in water quality for any parameter in order that those activities are not required to undergo review under 75-5-303(3). These criteria must be established in a manner that generally:
 - (i) equates significance with the potential for harm to human health, a beneficial use, or the environment;
 - (ii) considers both the quantity and the strength of the pollutant;
 - (iii) considers the length of time the degradation will occur;
 - (iv) considers the character of the pollutant so that greater significance is associated with carcinogens and toxins that bioaccumulate or biomagnify and lesser significance is associated with substances that are less harmful or less persistent.
 - (d) provide that changes of nitrate as nitrogen in ground water are nonsignificant if the discharge will not cause degradation of surface water and the predicted concentration of nitrate as nitrogen at the boundary of

the ground water mixing zone does not exceed:

- (i) 7.5 milligrams per liter from sources other than sewage;
 - (ii) 5.0 milligrams per liter from sewage discharged from a system that does not use level two treatment in an area where the ground water nitrate as nitrogen is 5.0 milligrams per liter or less;
 - (iii) 7.5 milligrams per liter from sewage discharged from a system using level two treatment, which must be defined in the rules; or
 - (iv) 7.5 milligrams per liter from sewage discharged from a system in areas where the ground water nitrate as nitrogen level exceeds 5.0 milligrams per liter primarily from sources other than human waste.
- (6) to the extent practicable, ensure that the rules adopted under subsection (5) establish objective and quantifiable criteria for various parameters. These criteria must, to the extent practicable, constitute guidelines for granting or denying applications for authorization to degrade high-quality waters under the policy established in 75-5-303(2) and (3).
- (7) adopt rules to implement this section."

Section 35. Section 75-5-302, MCA, is amended to read:

"75-5-302. Revising classifications in accordance with existing, present, and future most beneficial uses of water bodies. When the ~~board or~~ department is presented with facts indicating that a body of water is not properly classified in accordance with its existing, present, and future most beneficial uses, the department shall, within 90 days, evaluate the facts and ~~advise the board whether the water body is not properly classified.~~ If the ~~board~~ department determines that the water body is not properly classified, the ~~board~~ department shall initiate rulemaking to properly classify the water body in accordance with its existing, present, and future most beneficial uses. ~~Board action~~ Action pursuant to this section is subject to 75-5-307."

Section 36. Section 75-5-303, MCA, is amended to read:

"75-5-303. Nondegradation policy. (1) Existing uses of state waters and the level of water quality necessary to protect those uses must be maintained and protected.

(2) Unless authorized by the department under subsection (3) or exempted from review under 75-5-317, the quality of high-quality waters must be maintained.

(3) The department may not authorize degradation of high-quality waters unless it has been affirmatively demonstrated by a preponderance of evidence to the department that:

- (a) degradation is necessary because there are no economically, environmentally, and technologically feasible modifications to the proposed project that would result in no degradation;
- (b) the proposed project will result in important economic or social development and that the benefit of the development exceeds the costs to society of allowing degradation of high-quality waters;
- (c) existing and anticipated use of state waters will be fully protected; and
- (d) the least degrading water quality protection practices determined by the department to be economically, environmentally, and technologically feasible will be fully implemented by the applicant prior to and during the proposed activity.

(4) The department shall issue a preliminary decision either denying or authorizing degradation and shall provide public notice and a 30-day comment period prior to issuing a final decision. The department's preliminary and final decisions must include:

- (a) a statement of the basis for the decision; and
- (b) a detailed description of all conditions applied to any authorization to degrade state waters, including, when applicable, monitoring requirements, required water protection practices, reporting requirements, effluent limits, designation of the mixing zones, the limits of degradation authorized, and methods of determining compliance with the authorization for degradation.

(5) An interested person wishing to challenge a final department decision may request a hearing before the ~~board~~ board within 30 days of the final department decision. The contested case procedures of Title 2, chapter 4, part 6, apply to a hearing under this section.

(6) Periodically, but not more often than every 5 years, the department may review authorizations to degrade state waters. Following the review, the department may, after timely notice and opportunity for hearing, modify the authorization if the department determines that an economically, environmentally, and technologically feasible modification to the development exists. The decision by the department to modify an authorization may be appealed to the ~~board~~ board.

(7) The ~~board~~ department may not issue an authorization to degrade state waters that are classified as outstanding resource waters.

(8) The ~~board~~department shall adopt rules to implement this section."

Section 37. Section 75-5-304, MCA, is amended to read:

"75-5-304. Adoption of standards -- pretreatment, effluent, performance. (1) The ~~board~~department shall:

- (a) adopt pretreatment standards for wastewater discharged into a municipal disposal system;
- (b) adopt effluent standards as defined in 75-5-103;
- (c) adopt toxic effluent standards and prohibitions;
- (d) establish standards of performance for new point source discharges; and
- (e) adopt rules necessary to ensure the primacy of the department to regulate cooling water intake structures under 33 U.S.C. 1326(b).

(2) In taking action under subsection (1), the ~~board~~department shall ensure that the standards are cost-effective and economically, environmentally, and technologically feasible."

Section 38. Section 75-5-305, MCA, is amended to read:

"75-5-305. Adoption of requirements for treatment of wastes -- variance procedure -- appeals.

(1) The ~~board~~department may establish minimum requirements for the treatment of wastes. For cases in which the federal government has adopted technology-based treatment requirements for a particular industry or activity in 40 CFR, chapter I, subchapter N, the ~~board~~department shall adopt those requirements by reference. To the extent that the federal government has not adopted minimum treatment requirements for a particular industry or activity, the ~~board~~department may do so, through rulemaking, for parameters likely to affect beneficial uses, ensuring that the requirements are cost-effective and economically, environmentally, and technologically feasible. Except for the technology-based treatment requirements set forth in 40 CFR, chapter I, subchapter N, minimum treatment may not be required to address the discharge of a parameter when the discharge is considered nonsignificant under rules adopted pursuant to 75-5-301.

(2) (a) The ~~board~~department shall establish minimum requirements for the control and disposal of sewage from private and public buildings, including standards and procedures for variances from the requirements.

(b) For gray water reuse systems, the ~~board~~department shall establish rules that:

(i) allow the diversion of gray water from wastewater treatment systems and limit the amount of gray water flow allowed by permit;

(ii) address the uses of gray water, including when and how gray water may be applied to land; and

(iii) include any other provisions that the ~~board~~department considers necessary to ensure that gray water reuse systems comply with laws and regulations and protect public health and the environment.

(3) An applicant for a variance from minimum requirements adopted by a local board of health pursuant to 50-2-116 may appeal the local board of health's final decision to the department by submitting a written request for a hearing within 30 days after the decision. The written request must describe the activity for which the variance is requested, include copies of all documents submitted to the local board of health in support of the variance, and specify the reasons for the appeal of the local board of health's final decision.

(4) The department shall conduct a hearing on the request pursuant to Title 2, chapter 4, part 6. Within 30 days after the hearing, the department shall grant, conditionally grant, or deny the variance. The department shall base its decision on the ~~board's~~department's standards for a variance.

(5) A decision of the department pursuant to subsection (4) is appealable to district court under the provisions of Title 2, chapter 4, part 7."

Section 39. Section 75-5-307, MCA, is amended to read:

"75-5-307. Hearings required for classification, formulation of standards, and rulemaking. (1)

Before streams are classified or standards established or modified or rules made, revoked, or modified, the ~~board~~department shall hold a public hearing. Notice of the hearing specifying the waters concerned and the classification, standards, or modification of them and any rules proposed to be made, revoked, or modified ~~shall~~ must be published at least once a week for 3 consecutive weeks in a daily newspaper of general circulation in the area affected. Notice ~~shall also~~ must be mailed directly to persons the ~~board~~department believes may be affected by the proposed action. The council ~~shall~~ must be given not less than 30 days prior to first publication to comment on the proposed action.

(2) At a hearing held under this section, the ~~board~~department shall give all interested persons reasonable opportunity to submit data, views, or arguments, orally or in writing. The ~~board~~department may

make rules for the orderly conduct of the hearing but need not require compliance with the rules of evidence or procedure applicable to hearings held under 75-5-611."

Section 40. Section 75-5-308, MCA, is amended to read:

"75-5-308. Short-term water authorizations -- water quality standards. (1) Because these activities promote the public interest, the department may, if necessary, authorize short-term exemptions from the water quality standards for the following activities:

(a) emergency remediation activities that have been approved, authorized, or required by the department; and

(b) application of a pesticide that is registered by the United States environmental protection agency pursuant to 7 U.S.C. 136(a) when it is used to control nuisance aquatic organisms or to eliminate undesirable and nonnative aquatic species.

(2) An authorization must include conditions that minimize, to the extent practicable, the magnitude of any change in the concentration of the parameters affected by the activity and the length of time during which any change may occur. The authorization must also include conditions that prevent significant risk to public health and that ensure that existing and designated uses of state water are protected and maintained upon completion of the activity. Authorizations issued under this section may include conditions that require water quality or quantity monitoring and reporting. In the performance of its responsibilities under this section, the department may negotiate operating agreements with other departments of state government that are intended to minimize duplication in review of activities eligible for authorizations under this section.

(3) An authorization to use a pesticide does not relieve a person from the duty to comply with Title 80, chapters 8 and 15. The department may not authorize an exemption from water quality standards for an activity that requires a discharge permit under rules adopted ~~by the board~~ pursuant to 75-5-401."

Section 41. Section 75-5-310, MCA, is amended to read:

"75-5-310. Site-specific standards of water quality for aquatic life. (1) Notwithstanding any other provisions of this chapter and except as provided in subsection (2), the ~~board~~ department, upon application by a permit applicant, permittee, or person potentially liable under any state or federal environmental remediation

statute, shall adopt site-specific standards of water quality for aquatic life, both acute and chronic, as the standards of water quality required under 75-5-301(2) and (3). The site-specific standards of water quality must be developed in accordance with the procedures set forth in draft or final federal regulations, guidelines, or criteria.

(2) If the department, based upon its review of an application submitted under subsection (1) and sound scientific, technical, and available site-specific evidence, determines that the development of site-specific criteria in accordance with draft or final federal regulations, guidelines, or criteria would not be protective of beneficial uses, the department, within 90 days of the submission of an application under subsection (1), shall notify the applicant in writing of its determination and of all additional procedures that the applicant is required to comply with in the development of site-specific standards of water quality under this section. If there is a dispute between the department and the applicant as to the additional procedures, the ~~board~~board shall, on the request of the department or the applicant, hear and determine the dispute. The ~~board's~~board's decision must be based on sound scientific, technical, and available site-specific evidence."

Section 42. Section 75-5-311, MCA, is amended to read:

"75-5-311. Local water quality districts -- ~~board~~department approval -- local water quality programs. (1) A county that establishes a local water quality district according to the procedures specified in Title 7, chapter 13, part 45, shall, in consultation with the department, undertake planning and information-gathering activities necessary to develop a proposed local water quality program.

(2) A county may implement a local water quality program in a local water quality district if the program is approved by the ~~board~~department after a hearing conducted under 75-5-202.

(3) In approving a local water quality program, the ~~board~~department shall determine that the program is consistent with the purposes and requirements of Title 75, chapter 5, and that the program will be effective in protecting, preserving, and improving the quality of surface water and ground water, considering the administrative organization, staff, and financial and other resources available to implement the program.

(4) Subject to the ~~board's~~department approval, the commissioners and the governing bodies of cities and towns that participate in a local water quality district may adopt local ordinances to regulate the following specific facilities and sources of pollution:

- (a) onsite wastewater disposal facilities;
 - (b) storm water runoff from paved surfaces;
 - (c) service connections between buildings and publicly owned sewer mains;
 - (d) facilities that use or store halogenated and nonhalogenated solvents, including hazardous substances that are referenced in 40 CFR 261.31, United States environmental protection agency hazardous waste numbers F001 through F005, as amended; and
 - (e) internal combustion engine lubricants.
- (5) (a) For the facilities and sources of pollution included in subsection (4) and consistent with the provisions of subsection (6), the local ordinances may:
- (i) be compatible with or more stringent or more extensive than the requirements imposed by 75-5-304, 75-5-305, and 75-5-401 through 75-5-404 and rules adopted under those sections to protect water quality, establish waste discharge permit requirements, and establish best management practices for substances that have the potential to pollute state waters;
 - (ii) provide for administrative procedures, administrative orders and actions, and civil enforcement actions that are consistent with 75-5-601 through 75-5-604, 75-5-611 through 75-5-616, 75-5-621, and 75-5-622 and rules adopted under those sections; and
 - (iii) provide for civil penalties not to exceed \$1,000 per violation, provided that each day of violation of a local ordinance constitutes a separate violation, and criminal penalties not to exceed \$500 per day of violation or imprisonment for not more than 30 days, or both.
- (b) ~~Board~~ Department approval of an ordinance or local law that is more stringent than the comparable state law is subject to the provisions of 75-5-203.
- (6) The local ordinances authorized by this section may not:
- (a) duplicate the department's requirements and procedures relating to permitting of waste discharge sources and enforcement of water quality standards;
 - (b) regulate any facility or source of pollution to the extent that the facility or source is:
 - (i) required to obtain a permit or other approval from the department or federal government or is the subject of an administrative order, a consent decree, or an enforcement action pursuant to Title 75, chapter 5, part 4; Title 75, chapter 6; Title 75, chapter 10; the federal Comprehensive Environmental Response,

Compensation, and Liability Act of 1980, 42 U.S.C. 9601 through 9675, as amended; or federal environmental, safety, or health statutes and regulations;

(ii) exempted from obtaining a permit or other approval from the department because the facility or source is required to obtain a permit or other approval from another state agency or is the subject of an enforcement action by another state agency; or

(iii) subject to the provisions of Title 80, chapter 8 or chapter 15.

(7) If the boundaries of a district are changed after the ~~board~~department has approved the local water quality program for the district, the board of directors of the local water quality district shall submit a program amendment to the ~~board~~department and obtain ~~the board's~~department approval of the program amendment before implementing the local water quality program in areas that have been added to the district.

(8) The department shall monitor the implementation of local water quality programs to ensure that the programs are adequate to protect, preserve, and improve the quality of the surface water and ground water and are being administered in a manner consistent with the purposes and requirements of Title 75, chapter 5. ~~If the department finds that a local water quality program is not adequate to protect, preserve, and improve the quality of the surface water and ground water or is not being administered in a manner consistent with the purposes and requirements of Title 75, chapter 5, the department shall report to the board.~~

(9) If the ~~board~~department determines that a local water quality program is inadequate to protect, preserve, and improve the quality of the surface water and ground water in the local water quality district or that the program is being administered in a manner inconsistent with Title 75, chapter 5, the ~~board~~department shall give notice and conduct a hearing on the matter.

(10) If after the hearing the ~~board~~department determines that the program is inadequate to protect, preserve, and improve the quality of the surface water and ground water in the local water quality district or that it is not being administered in a manner consistent with the purposes of Title 75, chapter 5, the ~~board~~department shall require that necessary corrective measures be taken within a reasonable time, not to exceed 60 days.

(11) If an ordinance adopted under this section conflicts with a requirement imposed by the department's water quality program, the department's requirement supersedes the local ordinance.

(12) If the ~~board~~department finds that, because of the complexity or magnitude of a particular water

pollution source, the control of the source is beyond the reasonable capability of a local water quality district or may be more efficiently and economically performed at the state level, the ~~board may direct the department to~~ may assume and retain control over the source. A charge may not be assessed against the local water quality district for that source. Findings made under this subsection may be based on the nature of the source involved or on the source's relationship to the size of the community in which it is located."

Section 43. Section 75-5-312, MCA, is amended to read:

"75-5-312. Temporary water quality standards. (1) The ~~board-department~~ may, upon ~~recommendation of the department on its own accord~~ or upon a petition for rulemaking, as provided in 2-4-315, by a person, including a permit applicant or permittee, temporarily modify a water quality standard for a specific water body or segment on a parameter-by-parameter basis in those instances in which substantive information indicates that the water body or segment is not supporting its designated uses. When the ~~board-department~~ adopts temporary standards, the goal is to improve water quality to the point at which all the beneficial uses designated for that water body or segment are supported.

(2) As a condition for establishing temporary water quality standards for a particular water body or segment, the department or the petitioner, as applicable, shall prepare a support document and a preliminary implementation plan for use by the ~~board-department~~ in determining whether to adopt the proposed temporary water quality standards. A person shall submit a support document and a preliminary implementation plan to the department for its review at least 60 days prior to filing a petition with the ~~board-department~~ requesting the adoption of temporary water quality standards.

(3) The support document prepared by the department or the petitioner, as applicable, must describe:

- (a) the chemical, biological, and physical condition of the water body or segment;
- (b) the specific water quality limiting factors affecting the water body or segment;
- (c) the existing water quality standards that are not being achieved;
- (d) the temporary modifications to the existing water quality standards being requested;
- (e) existing beneficial uses; and
- (f) the designated uses considered attainable in the absence of the water quality limiting factors.

(4) The preliminary implementation plan prepared by the department or the petitioner, as applicable,

must contain:

(a) a description of the proposed actions that will eliminate the water quality limiting factors identified in subsection (3)(b) to the extent considered achievable; and

(b) a schedule for implementing the proposed actions that ensures that the existing water quality standards for the parameter or parameters at issue are met as soon as reasonably practicable.

(5) Within 30 days after the ~~board's~~ department's adoption of temporary water quality standards, the department or the petitioner, as applicable, shall:

(a) modify the preliminary implementation plan and schedule to reflect the requirements and timeframe adopted by the ~~board~~ department for the temporary standards; and

(b) develop a detailed work plan describing the implementation activities that will be conducted during the first field season of the temporary standards. The work plan must be approved by the director of the department.

(6) By March 1 of each year that the temporary water quality standards are in effect, the department or the petitioner, as applicable, shall submit a detailed work plan describing the implementation activities that will be conducted during that season. The annual work plans must be approved by the director of the department. The department shall maintain copies of the implementation plan, schedule, and annual work plans and any modifications to those plans and schedule.

(7) Upon the ~~board's~~ department's adoption of a temporary water quality standard, the department shall ensure that reasonable conditions and limitations designed to achieve compliance with the implementation plan are established in appropriate discharge permits.

(8) (a) A temporary modification of a water quality standard may not result in adverse impacts to existing beneficial uses or be established for a total period longer than 20 years.

(b) During the period of the temporary modification, the ~~board~~ department may not allow a discharge that will cause overall water quality to become worse than the overall quality of the water body or segment prior to the discharge.

(9) If a state water is designated as having temporary standards, the department shall report ~~to the board~~ at least every 3 years ~~or upon request of the board~~ regarding whether adequate efforts have been made to implement the plans submitted as the basis for the temporary standards.

(10) The ~~board~~department shall review the temporary standards and implementation plan at least every 3 years at a public hearing for which notice and an opportunity for comment have been provided. During this review, the ~~board~~department shall consider the progress made in restoring water quality to a level that achieves the goal of the temporary water quality standards. The ~~board~~department may terminate or modify the temporary standards based on information submitted at the time of review.

(11) The ~~board~~department shall terminate a temporary standard for a parameter if:

(a) values for the modified parameter or parameters improve to conditions that support all designated uses for that classification;

(b) the state water for which the temporary standard is adopted is reclassified as provided for in 75-5-302; or

(c) the plan submitted in support of the temporary water quality standard is not being implemented according to the plan's schedule or modifications to that plan or schedule made by the ~~board or~~ department.

(12) The ~~board or the~~ department may modify the implementation plan if there is convincing evidence that the plan needs modification.

(13) If a temporary standard for a parameter in a particular state water is terminated because the plan submitted in support of the temporary water quality standard is not being implemented according to the plan's schedule or modifications to that schedule made by the ~~board or~~ department, a person may request a new temporary standard by submitting both a petition for rulemaking and an implementation plan that meet the requirements of subsection (4). However, the ~~board~~department may not adopt another temporary standard for the parameter in the state water that would cumulatively be in effect for a total period longer than 20 years for the parameter in the state water."

Section 44. Section 75-5-313, MCA, is amended to read:

"75-5-313. Nutrient standards variances -- individual, general, and alternative. (1) The department shall, on a case-by-case basis, approve the use of an individual nutrient standards variance in a discharge permit based upon adequate justification pursuant to subsection (2) that attainment of the base numeric nutrient standards is precluded due to economic impacts, limits of technology, or both.

(2) (a) The department, in consultation with the nutrient work group, shall develop guidelines for

individual nutrient standards variances to ensure that the economic impacts from base numeric nutrient standards on public and private systems are equally and adequately addressed. In developing those guidelines, the department and the nutrient work group shall consider economic impacts appropriate for application within Montana, acknowledging that advanced treatment technologies for removing nutrients will result in significant and widespread economic impacts.

(b) The department shall consult with the nutrient work group prior to recommending base numeric nutrient standards ~~to the board~~ and shall continue to consult with the nutrient work group in implementing individual nutrient standards variances.

(3) The department shall review each application for an individual nutrient standards variance on a case-by-case basis to determine if there are reasonable alternatives, such as trading, permit compliance schedules, or the alternatives provided in subsections (5), (10), and (11), that preclude the need for the individual nutrient standards variance.

(4) Individual nutrient standards variances approved by the department become effective and may be incorporated into a permit only after a public hearing and adoption by the department under the rulemaking procedures of Title 2, chapter 4, part 3.

(5) (a) Because the treatment of wastewater to base numeric nutrient standards would result in substantial and widespread economic impacts on a statewide basis, a permittee who meets the requirements established in subsection (5)(b) may, subject to subsection (6), apply for a general nutrient standards variance.

(b) The department shall approve the use of a general nutrient standards variance for permittees with wastewater treatment facilities that discharge to surface water:

(i) in an amount greater than or equal to 1 million gallons per day of effluent if the permittee treats the discharge to, at a minimum, 1 milligram total phosphorus per liter and 10 milligrams total nitrogen per liter, calculated as a monthly average during the period in which the base numeric nutrient standards apply;

(ii) in an amount less than 1 million gallons per day of effluent if the permittee treats the discharge to, at a minimum, 2 milligrams total phosphorus per liter and 15 milligrams total nitrogen per liter, calculated as a monthly average during the period in which the base numeric nutrient standards apply; or

(iii) from lagoons that were not designed to actively remove nutrients if the permittee maintains the performance of the lagoon at a level equal to the performance of the lagoon on October 1, 2011.

(6) (a) The monthly average concentrations for total nitrogen and total phosphorus in subsection (5)(b) are the highest concentrations allowed in each category and remain in effect until May 31, 2016.

(b) Categories and concentrations in subsection (5)(b) must be adopted by rule by May 31, 2016.

(7) (a) Immediately after May 31, 2016, and every 3 years thereafter, the department, in consultation with the nutrient work group, shall revisit and update the concentration levels provided in subsection (5)(b).

(b) If more cost-effective and efficient treatment technologies are available, the concentration levels provided in subsection (5)(b) must be updated pursuant to subsection (7)(c) to reflect those changes.

(c) The updates become effective and may be incorporated into a permit only after a public hearing and adoption by the department under the rulemaking procedures of Title 2, chapter 4, part 3.

(8) An individual, general, or alternative nutrient standards variance may be established for a period not to exceed 20 years and must be reviewed by the department every 3 years from the date of adoption to ensure that the justification for its adoption remains valid.

(9) (a) Permittees receiving an individual, general, or alternative nutrient standards variance shall evaluate current facility operations to optimize nutrient reduction with existing infrastructure and shall analyze cost-effective methods of reducing nutrient loading, including but not limited to nutrient trading without substantial investment in new infrastructure.

(b) The department may request that a permittee provide the results of an optimization study and nutrient reduction analysis to the department within 2 years of receiving an individual, general, or alternative nutrient variance.

(10) (a) A permittee may request that the department provide an alternative nutrient standards variance if the permittee demonstrates that achieving nutrient concentrations established for an individual or general nutrient standards variance would result in an insignificant reduction of instream nutrient loading.

(b) A permittee receiving an alternative nutrient standards variance shall comply with the requirements of subsections (8) and (9) and shall demonstrate that the permittee's contribution to nutrient concentrations in the watershed continues to remain insignificant.

(11) The department shall encourage the use of alternative effluent management methods to reduce instream nutrient loading, including reuse, recharge, land application, and trading.

(12) On or before July 1 of each year, the department, in consultation with the nutrient work group,

shall report to the water policy committee established in 5-5-231 by providing a summary of the status of the base numeric nutrient standards, the nutrient standards variances, and the implementation of those standards and variances, including estimated economic impacts.

(13) On or before September 1 of each year preceding the convening of a regular session of the legislature, the department, in consultation with the nutrient work group, shall summarize the two most recent reports provided under subsection (12) and submit to the water policy committee established in 5-5-231 this final summary in accordance with 5-11-210."

Section 45. Section 75-5-315, MCA, is amended to read:

"75-5-315. Outstanding resource waters -- statement of purpose. (1) The legislature, understanding the requirements of applicable federal law and the uniqueness of Montana's water resource, recognizes that certain state waters are of such environmental, ecological, or economic value that the state should, upon a showing of necessity, prohibit, to the greatest extent practicable, changes to the existing water quality of those waters. Outstanding resource waters must be afforded the greatest protection feasible under state law, after thorough examination.

(2) The purpose of 75-5-316 and this section is to provide this protection, when necessary, and to provide guidance to the ~~board~~ department in establishing rules to accomplish that level of protection."

Section 46. Section 75-5-316, MCA, is amended to read:

"75-5-316. Outstanding resource water classification -- rules -- criteria -- limitations -- procedure -- definition. (1) As provided under the provisions of 75-5-301 and this section, the ~~board~~ department may adopt rules regarding the classification of waters as outstanding resource waters.

(2) The department may not:

(a) grant an authorization to degrade under 75-5-303 in outstanding resource waters; or
(b) allow a new or increased point source discharge that would result in a permanent change in the water quality of an outstanding resource water.

(3) (a) A person may petition the ~~board~~ department for rulemaking to classify state waters as outstanding resource waters. The ~~board~~ department shall initially review a petition against the criteria identified

in subsection (3)(c) to determine whether the petition contains sufficient credible information for the ~~board~~
department to accept the petition.

(b) The ~~board~~department may reject a petition without further review if it determines that the petition does not contain the sufficient credible information required by subsection (3)(a). If the ~~board~~department rejects a petition under this subsection (3)(b), it shall specify in writing the reasons for the rejection and the petition's deficiencies.

(c) The ~~board~~department may not adopt a rule classifying state waters as outstanding resource waters until it accepts a petition and makes a written finding containing the provisions enumerated in subsection (3)(d) that, based on a preponderance of the evidence:

(i) the waters identified in the petition constitute an outstanding resource based on the criteria provided in subsection (4);

(ii) the increased protection under the classification is necessary to protect the outstanding resource identified under subsection (3)(a) because of a finding that the outstanding resource is at risk of having one or more of the criteria provided in subsection (4) compromised as a result of pollution; and

(iii) classification as an outstanding resource water is necessary because of a finding that there is no other effective process available that will achieve the necessary protection.

(d) The written finding provided for in subsection (3)(c) must:

(i) identify the criteria provided in subsection (4) that ~~the board believes serve~~serve as justification for the determination that the water is an outstanding resource;

(ii) specifically identify the criteria that are at risk and explain why those criteria are at risk; and

(iii) specifically explain why other available processes, including the requirements of 75-5-303, will not achieve the necessary protection.

(4) The ~~board~~department shall consider the following criteria in determining whether certain state waters are outstanding resource waters. However, the ~~board~~department may determine that compliance with one or more of these criteria is insufficient to warrant classification of the water as an outstanding resource water. The ~~board~~department shall consider:

(a) whether the waters have been designated as wild and scenic;

(b) the presence of endangered or threatened species in the waters;

- (c) the presence of an outstanding recreational fishery in the waters;
- (d) whether the waters provide the only source of suitable water for a municipality or industry;
- (e) whether the waters provide the only source of suitable water for domestic water supply; and
- (f) other factors that indicate outstanding environmental or economic values not specifically

mentioned in this subsection (4).

- (5) Before accepting a petition, the ~~board~~department shall:

- (a) publish a notice and brief description of the petition in a daily newspaper of general circulation in the area affected and make copies of the proposal available to the public. The cost of publication must be paid by the petitioner.

- (b) provide for a 30-day written public comment period regarding whether the petition contains sufficient credible information, as provided in subsection (3)(b), prior to the hearing required in subsection (5)(c);

- (c) hold a public hearing regarding the petition and its contents and allow further written and oral testimony at the hearing;

- (d) issue a proposed decision, including:

- (i) the written finding provided for in subsection (3)(c); and

- (ii) the ~~board's~~department's acceptance or rejection of the petition;

- (e) provide for a 30-day public comment period regarding the ~~board's~~department's proposed decision; and

- (f) issue a final decision on acceptance or rejection of the petition, which must include a response to comments ~~that were~~ received by the ~~board~~department, and make copies of this decision available to the public.

- (6) (a) After acceptance of a petition, the ~~board shall direct the~~ department to shall prepare an environmental impact statement, as provided under Title 75, chapter 1, part 2, and this section.

- (b) (i) The petitioner is responsible for all of the costs associated with gathering and compiling data and information, and completing the environmental impact statement.

- (ii) Before the department may initiate work on the environmental impact statement, the petitioner shall pay the estimated cost of completing the environmental impact statement, as determined by the department.

(iii) Upon completion of the environmental impact statement, the petitioner shall pay the department any costs that exceeded the estimated cost. If the cost of the environmental impact statement was less than the estimated cost paid by the petitioner, the department shall reimburse the difference to the petitioner.

(iv) The ~~board~~ department may not grant or deny a petition until full payment for the environmental impact statement ~~has been~~ is received ~~by the department~~.

(7) The ~~board~~ department shall consult with other relevant state agencies and county governments when reviewing outstanding resource water classification petitions.

(8) (a) After completion of an environmental impact statement and consultation with state agencies and local governments, the ~~board~~ department may deny an accepted outstanding resource water classification petition if it finds that:

(i) the requirements of subsection (3)(c) have not been met; or

(ii) based on information available to the ~~board~~ department from the environmental impact statement or otherwise, approving the outstanding resource waters classification petition would cause significant adverse environmental, social, or economic impacts.

(b) If the ~~board~~ department denies the petition, it shall identify its reasons for petition denial.

(c) If the ~~board~~ department grants the petition, the ~~board~~ department shall initiate rulemaking to classify the waters as outstanding resource waters.

(9) A rule classifying state waters as outstanding resource waters under this section may be adopted but is not effective until approved by the legislature.

(10) The ~~board~~ department may not postpone or deny an application for an authorization to degrade state waters under 75-5-303 based on pending:

(a) ~~board~~ department action on an outstanding resource water classification petition regarding those waters; or

(b) legislative approval of ~~board~~ department action designating those waters as outstanding resource waters.

(11) As used in this section, "petitioner" means an individual, corporation, partnership, firm, association, or other private or public entity that petitions the ~~board~~ department to adopt rules to classify waters as outstanding resource waters."

Section 47. Section 75-5-318, MCA, is amended to read:

"75-5-318. Short-term water quality standards for turbidity. (1) Upon authorization by the department or the department of fish, wildlife, and parks pursuant to subsection (4), the short-term water quality standards for total suspended sediment and turbidity resulting from stream-related construction activities or stream enhancement projects are the narrative standards for total suspended sediment adopted by the ~~board~~ department under 75-5-301. If a short-term narrative standard is authorized under this section, the numeric standard for turbidity adopted by the ~~board~~ department under 75-5-301 does not apply to the affected water body during the term of the narrative standard.

(2) The department shall review each application for short-term standards on a case-by-case basis to determine whether there are reasonable alternatives that preclude the need for a narrative standard. If the department determines that the numeric standard for turbidity adopted ~~by the board~~ under 75-5-301 cannot be achieved during the term of the activity and that there are no reasonable alternatives to achieve the numeric standard, the department may authorize the use of a narrative standard for a specified term.

(3) Each authorization issued by the department must include conditions that minimize, to the extent practicable, the magnitude of any change in water quality and the length of time during which any change may occur. The authorization must also include site-specific conditions that ensure that the activity is not harmful, detrimental, or injurious to public health and the uses of state waters and that ensure that existing and designated beneficial uses of state water are protected and maintained upon completion of the activity. The department may not authorize short-term narrative standards for activities requiring a discharge permit under rules adopted ~~by the board~~ pursuant to 75-5-401. Authorizations issued under this section may include conditions that require water quality or quantity monitoring and reporting.

(4) In the performance of its responsibilities under this section, the department may negotiate operating agreements with other departments of state government that are intended to minimize duplication in review of activities eligible for authorizations under this section. The department of fish, wildlife, and parks may, in accordance with subsections (1), (2), and (3), authorize short-term water quality standards for total suspended sediment and turbidity for any stream construction project that it reviews under Title 75, chapter 7, part 1, or Title 87, chapter 5, part 5."

Section 48. Section 75-5-401, MCA, is amended to read:

"75-5-401. (Temporary) ~~Board rules~~ Rules for permits -- ground water exclusions. (1) Except as provided in subsection (5), the ~~board~~ department shall adopt rules:

(a) governing application for permits to discharge sewage, industrial wastes, or other wastes into state waters, including rules requiring the filing of plans and specifications relating to the construction, modification, or operation of disposal systems;

(b) governing the issuance, denial, modification, or revocation of permits. The ~~board~~ department may not require a permit for a water conveyance structure or for a natural spring if the water discharged to state waters does not contain industrial waste, sewage, or other wastes. Discharge to surface water of ground water that is not altered from its ambient quality does not constitute a discharge requiring a permit under this part if:

(i) the discharge does not contain industrial waste, sewage, or other wastes;

(ii) the water discharged does not cause the receiving waters to exceed applicable standards for any parameters; and

(iii) to the extent that the receiving waters in their ambient state exceed standards for any parameters, the discharge does not increase the concentration of the parameters.

(c) governing authorization to discharge under a general permit for storm water associated with construction activity. These rules must allow an owner or operator to notify the department of the intent to be covered under the general permit. This notice of intent must include a signed pollution prevention plan that requires the applicant to implement best management practices in accordance with the general permit. The rules must authorize the owner or operator to discharge under the general permit on receipt of the notice and plan by the department.

(2) The rules must allow the issuance or continuance of a permit only if the department finds that operation consistent with the limitations of the permit will not result in pollution of any state waters, except that the rules may allow the issuance of a temporary permit under which pollution may result if the department ensures that the permit contains a compliance schedule designed to meet all applicable effluent standards and water quality standards in the shortest reasonable period of time.

(3) The rules must provide that the department may revoke a permit if the department finds that the

holder of the permit has violated its terms, unless the department also finds that the violation was accidental and unforeseeable and that the holder of the permit corrected the condition resulting in the violation as soon as was reasonably possible.

(4) The ~~board~~department may adopt rules governing reclamation of sites disturbed by construction, modification, or operation of permitted activities for which a bond is voluntarily filed by a permittee pursuant to 75-5-405, including rules for the establishment of criteria and procedures governing release of the bond or other surety and release of portions of a bond or other surety.

(5) Discharges of sewage, industrial wastes, or other wastes into state ground waters from the following activities or operations are not subject to the ground water permit requirements adopted under subsections (1) through (4):

- (a) discharges or activities at wells injecting fluids associated with oil and gas exploration and production regulated under the federal underground injection control program;
- (b) disposal by solid waste management systems licensed pursuant to 75-10-221;
- (c) individuals disposing of their own normal household wastes on their own property;
- (d) hazardous waste management facilities permitted pursuant to 75-10-406;
- (e) water injection wells, reserve pits, and produced water pits used in oil and gas field operations and approved pursuant to Title 82, chapter 11;
- (f) agricultural irrigation facilities;
- (g) storm water disposal or storm water detention facilities;
- (h) subsurface disposal systems for sanitary wastes serving individual residences;
- (i) in situ mining of uranium facilities controlled under Title 82, chapter 4, part 2;
- (j) mining operations subject to operating permits or exploration licenses in compliance with The Strip and Underground Mine Reclamation Act, Title 82, chapter 4, part 2, or the metal mine reclamation laws, Title 82, chapter 4, part 3; or
- (k) projects reviewed under the provisions of the Montana Major Facility Siting Act, Title 75, chapter 20.

(6) Notwithstanding the provisions of 75-5-301(4), mixing zones for activities excluded from permit requirements under subsection (5) of this section must be established by the permitting agency for those

activities in accordance with 75-5-301(4)(a) through (4)(c).

(7) Notwithstanding the exclusions set forth in subsection (5), any excluded source that the department determines may be causing or is likely to cause violations of ground water quality standards may be required to submit monitoring information pursuant to 75-5-602.

(8) The ~~board~~department may adopt rules identifying other activities or operations from which a discharge of sewage, industrial wastes, or other wastes into state ground waters is not subject to the ground water permit requirements adopted under subsections (1) through (4).

(9) The ~~board~~department may adopt rules authorizing general permits for categories of point source discharges. The rules may authorize discharge upon issuance of an individual authorization by the department or upon receipt of a notice of intent to be covered under the general permit.

75-5-401. (Effective on occurrence of contingency) ~~Board rules~~ Rules for permits -- ground water exclusions. (1) Except as provided in subsection (5), the ~~board~~department shall adopt rules:

(a) governing application for permits to discharge sewage, industrial wastes, or other wastes into state waters, including rules requiring the filing of plans and specifications relating to the construction, modification, or operation of disposal systems;

(b) governing the issuance, denial, modification, or revocation of permits. The ~~board~~department may not require a permit for a water conveyance structure or for a natural spring if the water discharged to state waters does not contain industrial waste, sewage, or other wastes. Discharge to surface water of ground water that is not altered from its ambient quality does not constitute a discharge requiring a permit under this part if:

(i) the discharge does not contain industrial waste, sewage, or other wastes;

(ii) the water discharged does not cause the receiving waters to exceed applicable standards for any parameters; and

(iii) to the extent that the receiving waters in their ambient state exceed standards for any parameters, the discharge does not increase the concentration of the parameters.

(c) governing authorization to discharge under a general permit for storm water associated with construction activity. These rules must allow an owner or operator to notify the department of the intent to be covered under the general permit. This notice of intent must include a signed pollution prevention plan that requires the applicant to implement best management practices in accordance with the general permit. The

rules must authorize the owner or operator to discharge under the general permit on receipt of the notice and plan by the department.

(2) The rules must allow the issuance or continuance of a permit only if the department finds that operation consistent with the limitations of the permit will not result in pollution of any state waters, except that the rules may allow the issuance of a temporary permit under which pollution may result if the department ensures that the permit contains a compliance schedule designed to meet all applicable effluent standards and water quality standards in the shortest reasonable period of time.

(3) The rules must provide that the department may revoke a permit if the department finds that the holder of the permit has violated its terms, unless the department also finds that the violation was accidental and unforeseeable and that the holder of the permit corrected the condition resulting in the violation as soon as was reasonably possible.

(4) The ~~board~~department may adopt rules governing reclamation of sites disturbed by construction, modification, or operation of permitted activities for which a bond is voluntarily filed by a permittee pursuant to 75-5-405, including rules for the establishment of criteria and procedures governing release of the bond or other surety and release of portions of a bond or other surety.

(5) Discharges of sewage, industrial wastes, or other wastes into state ground waters from the following activities or operations are not subject to the ground water permit requirements adopted under subsections (1) through (4):

- (a) discharges or activities at wells injecting fluids associated with oil and gas exploration and production regulated under the federal underground injection control program;
- (b) disposal by solid waste management systems licensed pursuant to 75-10-221;
- (c) individuals disposing of their own normal household wastes on their own property;
- (d) hazardous waste management facilities permitted pursuant to 75-10-406;
- (e) water injection wells, reserve pits, and produced water pits used in oil and gas field operations and approved pursuant to Title 82, chapter 11;
- (f) agricultural irrigation facilities;
- (g) storm water disposal or storm water detention facilities;
- (h) subsurface disposal systems for sanitary wastes serving individual residences;

- (i) in situ mining of uranium facilities controlled under Title 82, chapter 4, part 2;
- (j) mining operations subject to operating permits or exploration licenses in compliance with The Strip and Underground Mine Reclamation Act, Title 82, chapter 4, part 2, or the metal mine reclamation laws, Title 82, chapter 4, part 3;
- (k) projects reviewed under the provisions of the Montana Major Facility Siting Act, Title 75, chapter 20; or
- (l) a carbon dioxide injection well for which a permit has been issued pursuant to Title 82, chapter 11, part 1.

(6) Notwithstanding the provisions of 75-5-301(4), mixing zones for activities excluded from permit requirements under subsection (5) of this section must be established by the permitting agency for those activities in accordance with 75-5-301(4)(a) through (4)(c).

(7) Notwithstanding the exclusions set forth in subsection (5), any excluded source that the department determines may be causing or is likely to cause violations of ground water quality standards may be required to submit monitoring information pursuant to 75-5-602.

(8) The ~~board~~department may adopt rules identifying other activities or operations from which a discharge of sewage, industrial wastes, or other wastes into state ground waters is not subject to the ground water permit requirements adopted under subsections (1) through (4).

(9) The ~~board~~department may adopt rules authorizing general permits for categories of point source discharges. The rules may authorize discharge upon issuance of an individual authorization by the department or upon receipt of a notice of intent to be covered under the general permit."

Section 49. Section 75-5-402, MCA, is amended to read:

"75-5-402. Duties of department. The department shall:

- (1) issue, suspend, revoke, modify, or deny permits to discharge sewage, industrial wastes, or other wastes into state waters, consistently with rules made by the ~~board~~department;
- (2) examine plans and other information needed to determine whether a permit should be issued or suggest changes in plans as a condition to the issuance of a permit;
- (3) clearly specify in any permit any limitations imposed as to the volume, strength, and other

significant characteristics of the waste to be discharged; and

(4) establish as conditions to the issuance of permits for which a performance bond or other surety is filed under 75-5-405 certain reclamation requirements sufficient to prevent pollution of state waters during and after operation of the project or activity for which a permit is issued."

Section 50. Section 75-5-502, MCA, is amended to read:

"75-5-502. ~~Board-Department~~ authorized to accept loans and grants. The ~~board-department~~ may accept loans and grants from the federal government and other sources to carry out the provisions of this chapter."

Section 51. Section 75-5-514, MCA, is amended to read:

"75-5-514. ~~When board-department~~ to establish rates and collect charges. (1) In the event a municipality or other entity operating sewage systems fails, neglects, or refuses when required by the department to adopt the system of charges and rates authorized by 75-5-511, the ~~board-department~~ may adopt a system of charges and rates as provided for in 75-5-511(1) and collect, administer, and apply such revenues for the purposes of 75-5-512.

(2) In lieu of proceeding in the manner set forth in subsection (1) of this section, the department may institute proceedings at law or in equity to enforce compliance with or restrain violations of 75-5-511 through 75-5-513."

Section 52. Section 75-5-515, MCA, is amended to read:

"75-5-515. Determination of costs payable by users. In determining the amount of treatment works costs to be paid by recipients of treatment works services, the municipality or other entity operating sewage systems or, if applicable, the ~~board-department~~ shall consider the strength, volume, types, and delivery flow rate characteristics of the waste; the nature, location, and type of treatment works; the receiving waters; and ~~such~~ other factors ~~as~~ deemed necessary."

Section 53. Section 75-5-516, MCA, is amended to read:

"75-5-516. Fees authorized for recovery -- process -- rulemaking. (1) Except as provided in subsections (12) and (13), the ~~board~~department shall by rule prescribe fees ~~to be assessed by the department~~ ~~that are~~ sufficient to cover the ~~board's and~~ department's documented costs, both direct and indirect, of:

- (a) reviewing and acting upon an application for a permit, permit modification, permit renewal, certificate, license, or other authorization required by rule under 75-5-201 or 75-5-401;
- (b) reviewing and acting upon a petition for a degradation allowance under 75-5-303;
- (c) reviewing and acting upon an application for a permit, certificate, license, or other authorization for which an exclusion is provided by rule from the permitting requirements established under 75-5-401;
- (d) enforcing the terms and conditions of a permit or authorization identified in subsections (1)(a) through (1)(c). If the permit or authorization is not issued, the department shall return this portion of any application fee to the applicant.
- (e) conducting compliance inspections and monitoring effluent and ambient water quality; and
- (f) preparing water quality rules or guidance documents.

(2) Except as provided in subsection (12), the rules promulgated ~~by the board~~ under this section must include:

(a) a fee on all applications for permits or authorizations, as identified in subsections (1)(a) through (1)(c), that recovers to the extent permitted by this subsection (2) the department's cost of reviewing and acting upon the applications. This fee may not be more than \$5,000 per discharge point for an application addressed under subsection (1), except that an application with multiple discharge points may be assessed a lower fee for those points according to ~~board~~-rule.

(b) an annual fee to be assessed according to the volume and concentration of waste discharged into state waters. The annual fee may not be more than \$3,000 per million gallons discharged per day on an annual average for any activity under permit or authorization, as described in subsection (1), except that:

(i) a permit or authorization with multiple discharge points may be assessed a lower fee for those points according to ~~board~~-rule; and

(ii) a facility that consistently discharges effluent at less than or equal to one-half of its effluent limitations and that is in compliance with other permit requirements, using the previous calendar year's discharge data, is entitled to a 25% reduction in its annual permit fee. Proportionate reductions of up to 25% of

the permit fee may be given to facilities that consistently discharge effluent at levels between 50% and 100% of their effluent limitations. However, a new permittee is not eligible for a fee reduction in its first year of operation, and a permittee with a violation of any effluent limit during the previous calendar year is not eligible for a fee reduction for the following year.

(3) To the extent permitted under subsection (2)(b), the annual fee must be sufficient to pay the department's estimated cost of conducting all tasks described under subsection (1) after subtracting:

- (a) the fees collected under subsection (2)(a);
- (b) state general fund appropriations for functions administered under this chapter; and
- (c) federal grants for functions administered under this chapter.

(4) For purposes of subsection (3), the department's estimated cost of conducting the tasks described under subsection (1) is the amount authorized by the legislature for the department's water quality discharge permit programs.

(5) If the applicant or holder fails to pay a fee assessed under this section or rules adopted under this section within 90 days after the date established by rule for fee payment, the department may:

- (a) impose an additional assessment consisting of not more than 20% of the fee plus interest on the required fee computed as provided in 15-1-216; or
- (b) suspend the permit or exclusion. The department may lift the suspension at any time up to 1 year after the suspension occurs if the holder has paid all outstanding fees, including all penalties, assessments, and interest imposed under subsection (5)(a).

(6) Fees collected pursuant to this section must be deposited in an account in the special revenue fund type pursuant to 75-5-517.

(7) The department shall give written notice to each person assessed a fee under this section of the amount of fee that is assessed and the basis for the department's calculation of the fee. This notice must be issued at least 30 days prior to the due date for payment of the assessment.

(8) A holder of or an applicant for a permit, certificate, or license may appeal the department's fee assessment to the ~~board~~board within 20 days after receiving written notice of the ~~department's~~ fee determination under subsection (7). The appeal ~~to the board~~ must include a written statement detailing the reasons that the permitholder or applicant considers the department's fee assessment to be erroneous or

excessive.

(9) If part of the department's fee assessment is not in dispute in an appeal filed under subsection (8), the undisputed portion of the fee must be paid to the department upon written request of the department.

(10) The contested case provisions of the Montana Administrative Procedure Act, provided for in Title 2, chapter 4, part 6, apply to a hearing before the ~~board~~ board under this section.

(11) A municipality may raise rates to cover costs associated with the fees prescribed in this section for a public sewer system without the hearing required in 69-7-111.

(12) (a) The application fee assessed pursuant to this section for a suction dredge, as described in 82-4-310(2), may not be more than:

- (i) \$25 if it is owned and operated by a resident of this state; or
- (ii) \$100 if it is owned and operated by a nonresident of this state.

(b) The annual fee assessed pursuant to this section for a suction dredge, as described in 82-4-310(2), may not be more than:

- (i) \$25 if it is owned and operated by a resident of this state; or
- (ii) \$100 if it is owned and operated by a nonresident of this state.

(13) A county, an incorporated city or town, or a conservation district formed pursuant to Title 76, chapter 15, is not subject to fees for authorizations pursuant to 75-5-318 or certifications related to section 401 of the federal Clean Water Act, 33 U.S.C. 1341."

Section 54. Section 75-5-802, MCA, is amended to read:

"75-5-802. Permitting -- concentrated animal feeding operation. (1) For the purpose of permitting concentrated animal feeding operations, the ~~board~~ department shall adopt, by reference, the federal regulations and definitions contained in 40 CFR, parts 122.23 and 412.

(2) Subject to the provisions of subsection (3), concentrated animal feeding operations that meet the requirements of 40 CFR, part 412, must be authorized by the department under a general permit.

(3) If, upon review of an application for a general permit authorization for a concentrated animal feeding operation production area, the department discovers site-specific information that indicates that a general permit authorization is not sufficiently protective of water quality, the department shall require an

individual permit."

Section 55. Section 75-6-104, MCA, is amended to read:

"75-6-104. Duties of department. (1) The department has general supervision over all state waters that are directly or indirectly being used by a person for a public water supply system, for domestic purposes, or as a source of ice.

(2) The department shall, subject to the provisions of 75-6-116 and as provided in 75-6-131, adopt rules and standards concerning:

(a) maximum contaminant levels for waters that are or will be used for a public water supply system;
(b) fees, as described in 75-6-108, for services rendered by the department;
(c) monitoring, recordkeeping, and reporting by persons who own or operate public water supply systems;

(d) requiring public notice to all users of a public water supply system when a person has been granted a variance or exemption or is in violation of this part or a rule or order issued pursuant to this part;

(e) the siting, construction, operation, and modification of a public water supply system or public sewage system, including requirements to remedy:

(i) defects in the design, operation, or maintenance of a public water supply system or public sewage system in order to prevent or correct introduction of contamination into water used for a public water supply system, for domestic purposes, or as a source of ice;

(ii) fecal contamination in water used by a public water supply system; or

(iii) failure or malfunction of the sources, treatment, storage, or distribution portion of a public water supply system in order to prevent or correct introduction of contamination into water used for a public water supply system, for domestic purposes, or as a source of ice;

(f) the review of the technical, managerial, and financial capacity of a proposed public water supply system or public sewage system, as necessary to ensure the capability of the system to meet the requirements of this part;

(g) the collection and analysis of samples of water used for drinking or domestic purposes;

(h) the issuance of variances and exemptions as authorized by the federal Safe Drinking Water Act

and this part:

- (i) administrative enforcement procedures and administrative penalties authorized under this part;
 - (j) standards and requirements for the review and approval of programs that may be voluntarily submitted by suppliers of public water supply systems to prevent water supply contamination from a cross-connection, including provisions to exempt cross-connections from the standards and requirements if all connected systems are department-approved public water supply systems;
 - (k) (i) allowable uses of reclaimed wastewater and classification of those uses;
 - (ii) treatment, monitoring, recordkeeping, and reporting standards and requirements tailored to each classification that must be met by the public sewage system to protect the uses of the reclaimed wastewater and any receiving water;
 - (iii) prohibition of reclaimed wastewater uses that are not allowable under subsection (2)(k)(i) or for which the reclaimed wastewater has not been treated in compliance with rules adopted under subsection (2)(k)(ii); and
 - (iv) a requirement that an applicant who proposes to use reclaimed wastewater pursuant to this subsection (2)(k) has obtained any necessary authorizations required under Title 85 from the department of natural resources and conservation; and
 - (l) any other requirement necessary for the protection of public health as described in this part.
- (3) Department rules must provide for the following:
- (a) except as provided in 75-6-131, a water supply or water distribution facility reviewed and approved by the department is not subject to changes in department design and construction criteria for a period of 36 months after written approval of the facility is issued by the department;
 - (b) except for facilities subject to permit requirements under Title 75, chapter 5, part 4, and except as provided under rules adopted pursuant to 75-6-131, a system of water supply, drainage, wastewater, or sewage reviewed and approved under this section is not subject to changes in department design or construction criteria for a period of 36 months after written approval is issued by the department;
 - (c) plans and specifications for a portion of a facility or system subject to a 36-month limit on criteria changes pursuant to subsections (3)(a) and (3)(b) but not constructed within the 36-month timeframe must be resubmitted for department review and approval before construction of that portion of the facility;

(d) the provisions of this subsection (3) may not limit an applicant's ability to alter a proposed project that is otherwise in conformance with applicable laws, rules, standards, and criteria.

(4) The department or the board may issue orders necessary to fully implement the provisions of this part.

(5) The department shall:

(1)(a) upon its own initiative or complaint to the department, to the mayor or health officer of a municipality, or to the managing board or officer of a public institution, make an investigation of alleged pollution of a water supply system and, if required, prohibit the continuance of the pollution by ordering removal of the cause of pollution;

(2)(b) have waters examined to determine their quality and the possibility that they may endanger public health;

(3)(c) consult and advise authorities of cities and towns and persons having or about to construct systems for water supply, drainage, wastewater, and sewage as to the most appropriate source of water supply and the best method of ensuring its quality;

(4)(d) advise persons as to the best method of treating and disposing of their drainage, sewage, or wastewater with reference to the existing and future needs of other persons and to prevent pollution;

(5)(e) consult with persons engaged in or intending to engage in manufacturing or other business whose drainage or sewage may tend to pollute waters as to the best method of preventing pollution;

(6)(f) collect fees, as described in 75-6-108, for services and deposit the fees collected in the public drinking water special revenue fund established in 75-6-115;

(7)(g) establish and maintain experiment stations and conduct experiments to study the best methods of treating water, drainage, wastewater, and sewage to prevent pollution, including investigation of methods used in other states;

(8)(h) enter on premises at reasonable times to determine sources of pollution or danger to water supply systems and whether rules and standards of the ~~board~~ department are being obeyed;

(9)(i) enforce and administer the provisions of this part;

(10)(j) establish a plan for the provision of safe drinking water under emergency circumstances;

(11)(k) maintain an inventory of public water supply systems and establish a program for conducting

sanitary surveys; and

(12)(l) enter into agreements with local boards of health whenever appropriate for the performance of surveys and inspections under the provisions of this part."

Section 56. Section 75-6-105, MCA, is amended to read:

"75-6-105. Records required for wells drilled to supply water to public. Every person drilling a water well to furnish water for public consumption shall keep a complete record of the depth, thickness, and character of different strata and other information prescribed by the ~~board~~ department. Data ~~shall~~ must be furnished to the department on forms prescribed by it. These data are available to the public at all reasonable times."

Section 57. Section 75-6-106, MCA, is amended to read:

"75-6-106. Laboratory license required. A laboratory analysis of water taken from a public water supply system or any report of an analysis required by this part or a rule adopted under this part may not be accepted by the department ~~or board~~ unless the analysis or report is made by the department of public health and human services' laboratory or by a laboratory licensed by the department of public health and human services for water analysis purposes."

Section 58. Section 75-6-107, MCA, is amended to read:

"75-6-107. Variances and exemptions. (1) Except as provided in subsection (3), the department may grant a variance or exemption from the requirements of this part or the rules adopted under this part pursuant to the terms and conditions of the variance and exemption rules adopted by the ~~board~~ department.

(2) Except as provided in subsection (3), a variance or exemption granted pursuant to this section must be accompanied by a compliance plan specifying a time schedule for compliance.

(3) The department may grant for a period of up to 5 years a variance or exemption for a public water system to use bottled water to achieve compliance with a maximum contaminant level for nitrate. The variance or exemption must include the requirement that the owner of the public water system warn the public that the tap water is not potable and could pose a health risk if consumed by:

- (a) posting signs at locations required by the variance or exemption for the period granted by the variance or exemption; and
- (b) delivering annual notices as required by the variance or exemption to users of the public water system.
- (4) A person aggrieved by a decision of the department to grant, deny, revoke, or modify a variance or exemption may appeal the department's decision to the ~~board~~ board as provided in the Montana Administrative Procedure Act."

Section 59. Section 75-6-108, MCA, is amended to read:

"75-6-108. ~~Board~~ Department to prescribe fees -- opportunity for appeal. (1) The ~~board~~ department shall by rule prescribe fees to be assessed annually ~~by the department~~ on owners of public water supply systems to recover department costs in providing services under this part. The annual fee for a public water supply system is no more than \$2.25 for each service connection to the public water supply system for the biennium beginning July 1, 1991, and ending June 30, 1993, and thereafter is no more than \$2 for each service connection to the public water supply system, although the minimum fee for any system is \$100, except that the fee for a transient noncommunity water system is \$50.

(2) Public water supply systems in a municipality may raise the rates to recover costs associated with the fees prescribed in this section without the public hearing required in 69-7-111.

(3) The ~~board~~ department shall by rule prescribe fees ~~to be assessed by the department~~ on persons who submit plans and specifications for construction, alteration, or extension of a public water supply system or public sewage system. The fees must be commensurate with the cost to the department of reviewing the plans and specifications.

(4) Fees collected pursuant to this section must be deposited in the public drinking water special revenue fund established in 75-6-115.

(5) (a) The department shall notify the owner of a public water supply system in writing of the amount of the fee to be assessed and the basis for the assessment. The owner may appeal the fee assessment in writing ~~to the board~~ to the board within 20 days after receipt of the written notice.

(b) An appeal must be based on the allegation that the fee is erroneous or excessive. An appeal may

not be based only on the fee schedule adopted by the ~~board~~ department.

(c) If any part of the fee assessment is not appealed, it must be paid to the department upon receipt of the notice provided for in subsection (5)(a)."

Section 60. Section 75-6-112, MCA, is amended to read:

"75-6-112. Prohibited acts. A person may not:

- (1) commence or continue construction, alteration, extension, or operation of a system of water supply or water distribution that is intended to be used as a public water supply system or a system that is intended to be used as a public sewage system before the person submits to the department necessary maps, plans, and specifications for its review and the department approves those maps, plans, and specifications;
- (2) operate or maintain a public water supply system that exceeds a maximum contaminant level established by the ~~board~~-department unless the person has been granted or has an application pending for a variance or exemption pursuant to this part;
- (3) violate any provision of this part or a rule adopted under this part; or
- (4) violate any condition or requirement of an approval issued pursuant to this part."

Section 61. Section 75-6-116, MCA, is amended to read:

"75-6-116. State regulations no more stringent than federal regulations or guidelines. (1) After April 14, 1995, except as provided in subsections (2) through (5) or unless required by state law, the ~~board~~ department may not adopt a rule to implement this chapter that is more stringent than the comparable federal regulations or guidelines that address the same circumstances. The ~~board~~-department may incorporate by reference comparable federal regulations or guidelines.

(2) The ~~board~~-department may adopt a rule to implement this chapter that is more stringent than comparable federal regulations or guidelines only if the ~~board~~-department makes a written finding after a public hearing and public comment and based on evidence in the record that:

- (a) the proposed state standard or requirement protects public health or the environment of the state; and
- (b) the state standard or requirement to be imposed can mitigate harm to the public health or

environment and is achievable under current technology.

(3) The written finding must reference information and peer-reviewed scientific studies contained in the record that forms the basis for the ~~board's~~ department's conclusion. The written finding must also include information from the hearing record regarding the costs to the regulated community that are directly attributable to the proposed state standard or requirement.

(4) (a) A person affected by a rule of the board of environmental review adopted after January 1, 1990, and before April 14, 1995, that that person believes to be more stringent than comparable federal regulations or guidelines may petition the ~~board~~ department to review the rule. If the ~~board~~ department determines that the rule is more stringent than comparable federal regulations or guidelines, the ~~board~~ department shall comply with this section by either revising the rule to conform to the federal regulations or guidelines or by making the written finding, as provided under subsection (2), within a reasonable period of time, not to exceed 12 months after receiving the petition. A petition under this section does not relieve the petitioner of the duty to comply with the challenged rule. The ~~board~~ department may charge a petition filing fee in an amount not to exceed \$250.

(b) A person may also petition the ~~board~~ department for a rule review under subsection (4)(a) if the ~~board~~ board of environmental review or the department adopts a rule after January 1, 1990, in an area in which no federal regulations or guidelines existed and the federal government subsequently establishes comparable regulations or guidelines that are less stringent than the previously adopted ~~board~~ rule.

(5) This section does not apply to a rule adopted under the emergency rulemaking provisions of 2-4-303(1)."

Section 62. Section 75-6-121, MCA, is amended to read:

"75-6-121. Delegation of review of small public water and sewer construction. (1) If a local government requests a delegation and the appropriate division of the local government has established satisfactory review programs, the department may delegate to the division of local government review of:

- (a) small public water and sewer systems; and
- (b) extensions or alterations of existing public water and sewer systems that involve 50 or fewer connections.

(2) The ~~board~~department may adopt rules regarding the delegation of review authority to divisions of local government."

Section 63. Section 75-6-131, MCA, is amended to read:

"75-6-131. Rules for regional public water supply systems. The ~~board~~department shall adopt rules for approval of regional public water supply systems established by a regional water authority pursuant to Title 75, chapter 6, part 3. The rules must:

(1) include procedures for the construction of regional public water supply systems, including regulatory provisions for a series of project segments over the construction period of the project as contained in the final engineering report, as may be amended and approved by the United States bureau of reclamation, that addresses the:

(a) approval of design and construction standards that may not be subject to change for 72 months;

(b) issuance of deviations from design and construction standards to remain in effect for 72 months;

and

(c) approval of an individual regional water supply system's standard construction contract documents and provisions for amendments to those documents to remain in effect for the construction period of the project;

(2) implement plan and specification review periods or deviation request approval periods for storage, pumping, and distribution portions of a regional public water supply system of not more than 40 calendar days for the initial review by the department and not more than 20 working days for any subsequent reviews;

(3) avoid duplicate processes and regulations by coordinating and incorporating the review and approval process applicable to a regional public water supply system by the United States bureau of reclamation."

Section 64. Section 75-10-104, MCA, is amended to read:

"75-10-104. Duties of department. The department shall:

(1) prepare, adopt, and implement a state solid waste management and resource recovery plan as required by 75-10-111 and 75-10-807;

(2) ~~prepare~~adopt rules necessary for the implementation of this part ~~for submission to the board,~~

including but not limited to rules:

- (a) governing the submission of plans for a solid waste management system;
 - (b) (i) establishing, for the purpose of determining the tonnage or volume-based solid waste management fee that a facility is subject to under 75-10-115(1)(c), methods for determining or estimating the amount of solid waste incinerated or disposed of at a facility; and
(ii) governing the application fee, flat annual license renewal fee, and tonnage or volume-based renewal fee for solid waste management systems;
 - (c) establishing the license application fee that a facility is subject to under 75-10-115(1)(a);
 - (d) establishing the flat annual license renewal fee that a facility is subject to under 75-10-115(1)(b);
 - (e) establishing the tonnage or volume-based annual renewal fee that a facility is subject to under 75-10-115(1)(c); and
 - (f) providing procedures for the quarterly collection of the solid waste management fee provided for in 75-10-204(6);
- (3) provide technical assistance to persons within the state for planning, designing, constructing, financing, and operating:
- (a) a solid waste management system in order to ensure that the system conforms to the state plan;
 - (b) integrated waste management programs; and
 - (c) collection, disposal, reduction, and educational programs for household hazardous waste and small quantities of hazardous waste that are exempt from regulation under Title 75, chapter 10, part 4;
- (4) enforce and administer the provisions of this part;
- (5) approve plans for a proposed solid waste management system submitted by a local government;
- and
- (6) serve as a clearinghouse for information on waste reduction and reuse, recycling technology and markets, composting, and household hazardous waste disposal, including chemical compatibility."

Section 65. Section 75-10-112, MCA, is amended to read:

"75-10-112. Powers and duties of local government. A local government may:

- (1) plan, develop, and implement a solid waste management system consistent with the state's solid

waste management and resource recovery plan and propose modifications to the state's solid waste management and resource recovery plan;

(2) upon adoption of the state plan ~~by the board~~, pass an ordinance or resolution to exempt the local jurisdiction from complying with the state plan and subsequent rules implementing the state plan. The ordinance or resolution must include a means to provide solid waste disposal to the citizens of the jurisdiction as required in part 2 of this chapter.

(3) employ appropriate personnel to carry out the provisions of this part;

(4) purchase, rent, or execute leasing agreements for equipment and material necessary for the implementation of a solid waste management system;

(5) cooperate with and enter into agreements with any persons in order to implement an effective solid waste management system;

(6) receive gifts, grants, or donations or acquire by gift, deed, or purchase land necessary for the implementation of any provision of this part;

(7) enforce the rules of the department or a local board of health pertaining to solid waste management through the appropriate county attorney;

(8) apply for and utilize state, federal, or other available money for developing or operating a solid waste management system;

(9) borrow from any lending agency funds available for assistance in planning a solid waste management system;

(10) finance a solid waste management system by:

(a) subject to 15-10-420, fixing the assessment of a tax as authorized by state law; and

(b) as provided in 7-13-4108, fixing and collecting by ordinance or resolution the rates, rentals, and charges for a solid waste management system on system customers;

(11) sell on an installment sales contract or lease to a person all or a portion of a solid waste management system that the local government plans, designs, or constructs for the consideration and upon the terms established by the local governments and consistent with the loan requirements set forth in this part and rules adopted to implement this part;

(12) procure insurance against any loss in connection with property, assets, or activities;

(13) mortgage or otherwise encumber all or a portion of a solid waste management system when the local government finds that the action is necessary to implement the purposes of this part, as long as the action is consistent with the loan requirements set forth in this part and rules adopted to implement this part;

(14) hold or dispose of real property and, subject to agreements with lessors and lessees, develop or alter the property by making improvements or betterments for the purpose of enhancing the value and usefulness of the property;

(15) finance, design, construct, own, and operate a solid waste management system or contract for any or all of the powers authorized under this part;

(16) control the disposition of solid waste generated within the jurisdiction of the local government, except that, in the absence of an imminent threat to public health, safety, or the environment, a local government may not adopt a flow control or similar ordinance to require use of a specific transfer station or landfill for disposal of solid waste;

(17) enter into long-term contracts with local governments and private entities for:

(a) financing, designing, constructing, and operating a solid waste management system;

(b) marketing all raw or processed material recovered from solid waste;

(c) marketing energy products or byproducts resulting from processing or utilization of solid waste;

(18) finance an areawide solid waste management system through the use of any of the sources of revenue available to the implementation entity for public works projects, by the use of revenue bonds issued by the city or county, or by fees levied by a solid waste management district, whichever is appropriate;

(19) enter into interlocal agreements in order to achieve and implement the powers enumerated in this part;

(20) regulate the siting and operation of container sites."

Section 66. Section 75-10-115, MCA, is amended to read:

"75-10-115. Solid waste management fee. (1) The department may ~~prepare-adopt~~ prepare-adopt rules for adoption ~~by the board~~, pursuant to 75-10-104 and ~~75-10-106~~, that set fees for the management and regulation of solid waste at facilities subject to regulation pursuant to part 2 of this chapter. Upon adoption ~~by the board~~, the department may collect the fees. These fees may include:

(a) a license application fee that reflects the cost of reviewing a new solid waste management system or a substantial change to an existing facility from the time an application is made until the license is issued or denied;

(b) a flat annual license renewal fee that reflects a minimal base fee related to the fixed costs of an annual inspection and license renewal. The initial annual fee year for a new facility commences on the date that the facility initially receives waste. The fee must be based upon the categorization of solid waste management systems into separate classes identified by the following criteria:

- (i) the quantity of solid waste received by the solid waste management system;
 - (ii) the nature of the solid waste received; and
 - (iii) the nature of the waste management occurring within the solid waste management system.
- (c) a tonnage or volume-based fee on solid waste disposal.

(2) All fees collected must be deposited in the solid waste management account provided for in 75-10-117."

Section 67. Section 75-10-221, MCA, is amended to read:

"75-10-221. License required -- application. (1) Except as provided in 75-10-214, a person may not dispose of solid waste or operate a solid waste management system without a license from the department.

(2) The department shall provide application forms for a license as provided in this part.

(3) The application must contain the name and business address of the applicant, the location of the proposed solid waste management system, a plan of operation and maintenance, and other information that the department may by rule require.

(4) The license provided for in this section is for a period not to exceed 12 months unless renewed by the department.

(5) The department may require submission of a new application if the department determines that the plan of operation, the management of the solid waste system, or the geological or ground water conditions have changed since the license was initially approved.

(6) In preparing rules ~~for board adoption~~ that establish fees for licenses and the review of applications pursuant to 75-10-104(2), the department shall consider the tonnage or volume of waste to be managed and

the size of the proposed solid waste management system. The fees adopted ~~by the board~~ must encourage reduction in the tonnage or volume of waste to be managed and cover the costs to the department of initially reviewing and annually licensing the solid waste management system."

Section 68. Section 75-11-505, MCA, is amended to read:

"75-11-505. Administrative rules -- underground storage tanks -- petroleum mixing zones. (1)

The department may adopt, amend, or repeal rules for the prevention and correction of leakage from underground storage tanks, including:

- (a) reporting by owners and operators;
 - (b) financial responsibility;
 - (c) release detection, prevention, and corrective action;
 - (d) procedures and standards for the issuance, nonissuance, renewal, nonrenewal, modification, revocation, suspension, and enforcement of permits authorizing the operation of underground storage tanks;
 - (e) standards for design, construction, installation, and closure;
 - (f) development of a schedule of annual fees, not to exceed \$108 for a tank over 1,100 gallons and not to exceed \$36 for a tank 1,100 gallons or less, for each tank, for tank registration to defray state and local costs of implementing an underground storage tank program. The department may prorate fees to cover periods not equal to 12 months in order to provide staggered scheduling of renewal dates.
 - (g) a system for assessment of administrative penalties, notice, and appeals under 75-11-525; and
 - (h) delegation of authority and funds to local agents for inspections and implementation. The delegation of authority to local agents must complement and may not duplicate existing authority for implementation of rules adopted by the department of justice that relate to underground storage tanks.
- (2) In accordance with 75-11-508, the department:
- (a) shall adopt rules governing the inclusion of a petroleum mixing zone, as defined in 75-11-503, in a corrective action plan; and
 - (b) may incorporate by reference rules adopted ~~by the board of environmental review~~ pursuant to 75-5-301 and 75-5-303 related to mixing zones for ground water."

Section 69. Section 75-11-508, MCA, is amended to read:

"75-11-508. Corrective action -- petroleum mixing zones. (1) A corrective action plan prepared pursuant to 75-11-309 may include the use of a petroleum mixing zone, as defined in 75-11-503, in conjunction with the final remediation and resolution of a petroleum release.

(2) If a petroleum mixing zone is included in a corrective action plan, it may be established only when:

- (a) all source material has been removed to the maximum extent practicable;
- (b) the extent of petroleum contamination has been defined;
- (c) natural breakdown or attenuation is occurring within the plume; and
- (d) no further corrective action is reasonably required at the site.

(3) The boundary of a petroleum mixing zone established in accordance with this section must be contained within the boundary of the property on which the petroleum release originated unless a recorded easement, a restrictive covenant, or another institutional control approved by the department on an adjoining property allows the petroleum mixing zone to extend onto the adjoining property.

(4) Monitoring of a petroleum mixing zone may not be required unless there is a unique, overriding, site-specific, impact-related reason to require monitoring.

(5) At the downgradient boundary of a petroleum mixing zone, the concentration of any petroleum constituent, including benzene, may not exceed a water quality standard adopted ~~by the board~~ pursuant to 75-5-301.

(6) If a petroleum mixing zone is established and maintained:

- (a) the petroleum release is considered ~~to be~~ resolved;
- (b) no further corrective action for the petroleum release is required; and
- (c) the department shall issue a no-further-action letter to the owner or operator stating that a petroleum mixing zone has been established for the release and describing any conditions required to maintain the petroleum mixing zone.

(7) A corrective action plan approved by the department pursuant to 75-11-309 may be amended to include a petroleum mixing zone in accordance with this section, including a corrective action plan approved prior to April 15, 2011."

Section 70. Section 75-20-105, MCA, is amended to read:

"75-20-105. Adoption of rules. The ~~board~~ department may adopt rules implementing the provisions of this chapter."

Section 71. Section 75-20-216, MCA, is amended to read:

"75-20-216. Study, evaluation, and report on proposed facility -- assistance by other agencies.

(1) After receipt of an application, the department shall within 30 days notify the applicant in writing that:

- (a) the application is in compliance and is accepted as complete; or
- (b) the application is not in compliance and shall list the deficiencies. Upon correction of these deficiencies and resubmission by the applicant, the department shall within 15 days notify the applicant in writing that the application is in compliance and is accepted as complete.

(2) Upon receipt of an application complying with 75-20-211 through 75-20-213, 75-20-215, and this section, the department shall:

(a) commence an evaluation of the proposed facility and its effects, considering all applicable criteria listed in 75-20-301, and shall issue a decision, opinion, order, certification, or permit as provided in subsection (3);

(b) use, to the extent that it considers applicable, valid and useful existing studies and reports submitted by the applicant or compiled by a state or federal agency; and

(c) if a modification of a proposed facility is needed as determined by the department, consult with the applicant. The proposed modification must be analyzed in the environmental review document prepared under Title 75, chapter 1, parts 1 through 3.

(3) Except as provided in 75-1-205(4), 75-1-208(4)(b), and 75-20-231, the department shall issue, within 9 months following the date of acceptance of an application, any decision, opinion, order, certification, or permit required under the laws, other than those contained in this chapter, administered by the department. A decision, opinion, order, certification, or permit, with or without conditions, must be made under those laws. Nevertheless, the department retains authority to make the determination required under 75-20-301(1)(c) or (3). The decision, opinion, order, certification, or permit must be used in the final site selection process. Prior to the issuance of a preliminary decision by the department and pursuant to rules adopted by the ~~board~~ department,

the department shall provide an opportunity for public review and comment.

(4) Except as provided in 75-1-205(4), 75-1-208(4)(b), and 75-20-231, within 9 months following acceptance of an application for a facility, the department shall issue a report that must contain the department's studies, evaluations, recommendations, customer fiscal impact analysis, if required pursuant to 69-2-216, and other pertinent documents resulting from its study and evaluation. An environmental impact statement or analysis prepared pursuant to the Montana Environmental Policy Act may be included in the department findings if compelling evidence indicates that adverse environmental impacts are likely to result due to the construction and operation of a proposed facility. If the application is for a combination of two or more facilities, the department shall issue its report within the greater of the lengths of time provided for in this subsection for either of the facilities.

(5) For projects subject to joint review by the department and a federal land management agency, the department's certification decision may be timed to correspond to the record of decision issued by the participating federal agency.

(6) The departments of transportation; fish, wildlife, and parks; natural resources and conservation; revenue; and public service regulation and the consumer counsel shall report to the department information relating to the impact of the proposed facility on each department's area of expertise. The department shall allocate funds obtained from filing fees to the departments making reports and to the office of consumer counsel to reimburse them for the costs of compiling information and issuing the required report."

Section 72. Section 75-20-406, MCA, is amended to read:

"75-20-406. Judicial review of ~~board~~ decisions. (1) A person aggrieved by the final decision of the ~~board~~ department or board on an application for a certificate may obtain judicial review of that decision by the filing of a petition in a state district court of competent jurisdiction. A challenge to the issuance of a certificate must be brought in the county in which the activity authorized by the certificate will occur. If an activity will occur in more than one county, the action may be brought in any of the counties in which the activity will occur.

(2) The judicial review procedure is the procedure for contested cases under the Montana Administrative Procedure Act.

(3) A judicial challenge to a certificate issued pursuant to this chapter by a party other than the

certificate holder or applicant must include the party to whom the certificate was issued as provided in this chapter unless otherwise agreed to by the certificate holder or applicant. All judicial challenges of certificates for projects with a project cost, as determined by the court, of more than \$1 million must have precedence over any civil cause of a different nature pending in that court. If the court determines that the challenge was without merit or was for an improper purpose, such as to harass, to cause unnecessary delay, or to impose needless or increased cost in litigation, the court may award attorney fees and costs incurred in defending the action."

Section 73. Section 75-20-407, MCA, is amended to read:

"75-20-407. Jurisdiction of courts restricted. Except as expressly set forth in 75-20-401, 75-20-406, and 75-20-408, no court of this state has jurisdiction to hear or determine any issue, case, or controversy concerning any matter which was or could have been determined in a proceeding before the ~~board~~board or department under this chapter or to stop or delay the construction, operation, or maintenance of a facility, except to enforce compliance with this chapter or the provisions of a certificate issued ~~hereunder~~ pursuant to 75-20-404 and 75-20-405 or 75-20-408."

Section 74. Section 75-20-1001, MCA, is amended to read:

"75-20-1001. Geothermal exploration -- notification of department. The ~~board~~department shall adopt rules requiring every person who proposes to gather geological data by boring of test holes or other underground exploration, investigation, or experimentation related to the possible future development of a facility employing geothermal resources to comply with the following requirements:

- (1) notify the department of the proposed action;
 - (2) submit to the department a description of the area involved;
 - (3) submit to the department a statement of the proposed activities to be conducted and the methods to be utilized;
 - (4) submit to the department geological data reports at such times as may be required by the rules;
- and
- (5) submit such other information as the ~~board~~department may require in the rules."

Section 75. Section 75-20-1203, MCA, is amended to read:

"75-20-1203. Additional requirements for issuance of a certificate for the siting of a nuclear facility. (1) The ~~board~~department may not issue a certificate to construct a nuclear facility unless it finds that:

(a) no legal limits exist regarding the rights of a person or group of persons to bring suit for and recover full and just compensation from the designers, manufacturers, distributors, owners, ~~and/or or~~ operators of a nuclear facility for damages resulting from the existence or operation of the facility; and further, that no legal limits exist regarding the total compensation ~~which~~that may be required from the designers, manufacturers, distributors, owners, ~~and/or or~~ operators of a nuclear facility for damages resulting from the existence or operation of ~~such~~the facility;

(b) the effectiveness of all safety systems, including but not limited to the emergency core cooling systems, of ~~such~~the nuclear facility has been demonstrated, to the satisfaction of the ~~board~~department, by the comprehensive laboratory testing of substantially similar physical systems in actual operation;

(c) the radioactive materials from ~~such~~the nuclear facilities can be contained with no reasonable chance, as determined by the ~~board~~department, of intentional or unintentional escape or diversion of ~~such~~radioactive materials into the natural environment in ~~such~~a manner ~~as to cause~~that causes substantial or long-term harm or hazard to present or future generations due to imperfect storage technologies, earthquakes or other acts of God, theft, sabotage, acts of war or other social instabilities, or whatever other causes the ~~board~~department may ~~deem to be~~consider reasonably possible, at any time during which ~~such~~the materials remain a radiological hazard; and

(d) the owner of ~~such~~the nuclear facility has posted with the ~~board~~department a bond totaling not less than 30% of the total capital cost of the facility, as estimated by the ~~board~~department, to pay for the decommissioning of the facility and the decontamination of any area contaminated with radioactive materials due to the existence or operation of the facility in the event the owner fails to pay the full costs of ~~such~~the decommissioning and decontamination. Excess bond, if any, ~~shall~~must be refunded to the owner upon demonstration, to the satisfaction of the ~~board~~department, that the site and environs of the facility pose no radiological danger to present or future generations and that whatever other conditions the ~~board~~department may ~~deem~~consider reasonable ~~have been~~are met.

(2) Nothing in this section ~~shall~~may be construed as relieving the owner of a nuclear facility from full

financial responsibility for the decommissioning of ~~such~~the facility and decontamination of any area contaminated with radioactive materials as a result of the existence or operation of ~~such~~the facility at any time during which such materials remain a radiological hazard."

Section 76. Section 75-20-1205, MCA, is amended to read:

"75-20-1205. Emergency approval authority invalid for nuclear facilities. Notwithstanding the provisions of 75-20-304(2) and (3), the ~~board~~department may not waive compliance with any of the provisions of 75-20-201 and 75-20-203 or this part relating to certification of a nuclear facility."

Section 77. Section 76-3-622, MCA, is amended to read:

"76-3-622. Water and sanitation information to accompany preliminary plat. (1) Except as provided in subsection (2), the subdivider shall submit to the governing body or to the agent or agency designated by the governing body the information listed in this section for proposed subdivisions that will include new water supply or wastewater facilities. The information must include:

- (a) a vicinity map or plan that shows:
 - (i) the location, within 100 feet outside of the exterior property line of the subdivision and on the proposed lots, of:
 - (A) flood plains;
 - (B) surface water features;
 - (C) springs;
 - (D) irrigation ditches;
 - (E) existing, previously approved, and, for parcels less than 20 acres, proposed water wells and wastewater treatment systems;
 - (F) for parcels less than 20 acres, mixing zones identified as provided in subsection (1)(g); and
 - (G) the representative drainfield site used for the soil profile description as required under subsection (1)(d); and
 - (ii) the location, within 500 feet outside of the exterior property line of the subdivision, of public water and sewer facilities;

(b) a description of the proposed subdivision's water supply systems, storm water systems, solid waste disposal systems, and wastewater treatment systems, including:

(i) whether the water supply and wastewater treatment systems are individual, shared, multiple user, or public as those systems are defined in rules published by the department of environmental quality; and

(ii) if the water supply and wastewater treatment systems are shared, multiple user, or public, a statement of whether the systems will be public utilities as defined in 69-3-101 and subject to the jurisdiction of the public service commission or exempt from public service commission jurisdiction and, if exempt, an explanation for the exemption;

(c) a drawing of the conceptual lot layout at a scale no smaller than 1 inch equal to 200 feet that shows all information required for a lot layout document in rules adopted by the department of environmental quality pursuant to 76-4-104;

(d) evidence of suitability for new onsite wastewater treatment systems that, at a minimum, includes:

(i) a soil profile description from a representative drainfield site identified on the vicinity map, as provided in subsection (1)(a)(i)(G), that complies with standards published by the department of environmental quality;

(ii) demonstration that the soil profile contains a minimum of 4 feet of vertical separation distance between the bottom of the permeable surface of the proposed wastewater treatment system and a limiting layer; and

(iii) in cases in which the soil profile or other information indicates that ground water is within 7 feet of the natural ground surface, evidence that the ground water will not exceed the minimum vertical separation distance provided in subsection (1)(d)(ii);

(e) for new water supply systems, unless cisterns are proposed, evidence of adequate water availability:

(i) obtained from well logs or testing of onsite or nearby wells;

(ii) obtained from information contained in published hydrogeological reports; or

(iii) as otherwise specified by rules adopted by the department of environmental quality pursuant to 76-4-104;

(f) evidence of sufficient water quality in accordance with rules adopted by the department of

environmental quality pursuant to 76-4-104;

(g) a preliminary analysis of potential impacts to ground water quality from new wastewater treatment systems, using as guidance rules adopted ~~by the board of environmental review~~ pursuant to 75-5-301 and 75-5-303 related to standard mixing zones for ground water, source specific mixing zones, and nonsignificant changes in water quality. The preliminary analysis may be based on currently available information and must consider the effects of overlapping mixing zones from proposed and existing wastewater treatment systems within and directly adjacent to the subdivision. Instead of performing the preliminary analysis required under this subsection (1)(g), the subdivider may perform a complete nondegradation analysis in the same manner as is required for an application that is reviewed under Title 76, chapter 4.

(2) A subdivider whose land division is excluded from review under 76-4-125(1) is not required to submit the information required in this section.

(3) A governing body may not, through adoption of regulations, require water and sanitation information in addition to the information required under this section unless the governing body complies with the procedures provided in 76-3-511."

Section 78. Section 76-4-1001, MCA, is amended to read:

"76-4-1001. Penalty factors. (1) In determining the amount of an administrative or civil penalty to which subsection (4) applies, the department of environmental quality or the district court, as appropriate, shall take into account the following factors:

- (a) the nature, extent, and gravity of the violation;
- (b) the circumstances of the violation;
- (c) the violator's prior history of any violation, which:
 - (i) must be a violation of a requirement under the authority of the same chapter and part as the violation for which the penalty is being assessed;
 - (ii) must be documented in an administrative order or a judicial order or judgment issued within 3 years prior to the date of the occurrence of the violation for which the penalty is being assessed; and
 - (iii) may not, at the time that the penalty is being assessed, be undergoing or subject to administrative appeal or judicial review;

- (d) the economic benefit or savings resulting from the violator's action;
 - (e) the violator's good faith and cooperation;
 - (f) the amounts voluntarily expended by the violator, beyond what is required by law or order, to address or mitigate the violation or impacts of the violation; and
 - (g) other matters that justice may require.
- (2) After the amount of a penalty is determined under subsection (1), the department of environmental quality or the district court, as appropriate, may consider the violator's financial ability to pay the penalty and may institute a payment schedule or suspend all or a portion of the penalty.
- (3) The department of environmental quality may accept a supplemental environmental project as mitigation for a portion of the penalty. For purposes of this section, a "supplemental environmental project" is an environmentally beneficial project that a violator agrees to undertake in settlement of an enforcement action but which the violator is not otherwise legally required to perform.
- (4) This section applies to penalties assessed by the department of environmental quality or the district court under Title 75, chapters 2, 5, 6, 11, and 20; Title 75, chapter 10, parts 2, 4, 5, and 12; and Title 76, chapter 4.
- (5) ~~The board of environmental review and the~~ department of environmental quality may, ~~for the statutes listed in subsection (4) for which each has rulemaking authority,~~ adopt rules to implement this section."

Section 79. Section 80-15-105, MCA, is amended to read:

"80-15-105. Rulemaking. (1) The ~~board~~ department of environmental quality, subject to the provisions of 80-15-110, shall adopt rules for the administration of this chapter for which the ~~board and the~~ department of environmental quality ~~have~~ has responsibility. These rules must include but are not limited to:

- (a) standards and interim numerical standards for agricultural chemicals in ground water as authorized by 80-15-201;
- (b) procedures for ground water monitoring as authorized by 80-15-202 and 80-15-203;
- (c) field and laboratory operational quality assurance, quality control, and confirmatory procedures that are authorized by 80-15-107, 80-15-202, and 80-15-203 and that may include, through adoption by reference, procedures that have been established or approved by EPA for quality assurance and quality

control;

(d) standards for maintaining the confidentiality of data and information declared confidential by EPA and the confidentiality of chemical registrant data and information protected from disclosure by federal or state law as required by 80-15-108; and

(e) administrative civil penalties as authorized by 80-15-412.

(2) The department shall adopt rules necessary to carry out its responsibilities under this chapter.

These rules must include but are not limited to:

(a) procedures for ground water monitoring as authorized by 80-15-202 and 80-15-203;

(b) the content and procedures for development of agricultural chemical ground water management plans, including the content of best management practices and best management plans, procedures for obtaining comments from the department of environmental quality on the plans, and the adoption of completed plans and plan modifications as authorized by 80-15-211 through 80-15-218;

(c) standards for maintaining the confidentiality of data and information declared confidential by EPA and of chemical registrant data and information protected from disclosure by federal or state law as required by 80-15-108;

(d) field and laboratory operational quality assurance, quality control, and confirmatory procedures that are authorized by 80-15-107, 80-15-202, and 80-15-203 and that may include, through adoption by reference, procedures that have been established or approved by EPA for quality assurance and quality control;

(e) emergency procedures as authorized by 80-15-405;

(f) procedures for issuance of compliance orders as authorized by 80-15-403; and

(g) procedures for the assessment of administrative civil penalties as authorized by 80-15-412."

Section 80. Section 80-15-110, MCA, is amended to read:

"80-15-110. State regulations no more stringent than federal regulations or guidelines. (1) After April 14, 1995, except as provided in subsections (2) through (5) or unless required by state law, the ~~board~~ department of environmental quality may not adopt a rule to implement this chapter that is more stringent than the comparable federal regulations or guidelines that address the same circumstances. The ~~board~~ department

of environmental quality may incorporate by reference comparable federal regulations or guidelines.

(2) The ~~board~~department of environmental quality may adopt a rule to implement this chapter that is more stringent than comparable federal regulations or guidelines only if ~~the board~~it makes a written finding after a public hearing and public comment and based on evidence in the record that:

(a) the proposed state standard or requirement protects public health or the environment of the state; and

(b) the state standard or requirement to be imposed can mitigate harm to the public health or environment and is achievable under current technology.

(3) The written finding must reference information and peer-reviewed scientific studies contained in the record that forms the basis for the ~~board's~~ conclusion. The written finding must also include information from the hearing record regarding the costs to the regulated community that are directly attributable to the proposed state standard or requirement.

(4) (a) A person affected by a rule of the ~~board~~board adopted after January 1, 1990, and before April 14, 1995, that that person believes to be more stringent than comparable federal regulations or guidelines may petition the ~~board~~board to review the rule. If the ~~board~~board determines that the rule is more stringent than comparable federal regulations or guidelines, ~~the board~~the department shall comply with this section by either revising the rule to conform to the federal regulations or guidelines or by making the written finding, as provided under subsection (2), within a reasonable period of time, not to exceed 12 months after receiving the petition. A petition under this section does not relieve the petitioner of the duty to comply with the challenged rule. The ~~board~~board may charge a petition filing fee in an amount not to exceed \$250.

(b) A person may also petition the ~~board~~board for a rule review under subsection (4)(a) if the board ~~adopts~~adopted a rule after January 1, 1990, and before [the effective date of this act] in an area in which no federal regulations or guidelines existed and the federal government subsequently establishes comparable regulations or guidelines that are less stringent than the previously adopted board rule.

(5) This section does not apply to a rule adopted under the emergency rulemaking provisions of 2-4-303(1)."

Section 81. Section 80-15-201, MCA, is amended to read:

"80-15-201. Ground water standards. (1) The ~~board~~department of environmental quality shall adopt standards and, as applicable, interim numerical standards for agricultural chemicals in ground water. The standards must be the same as any promulgated or nonpromulgated federal standard established by EPA, although the ~~board~~department of environmental quality may determine, pursuant to the requirements of subsection (4), that an interim numerical standard different from either a promulgated or nonpromulgated federal standard is justified. Promulgated federal standards must receive preference. Except as provided in subsections (3) and (4), if more than one nonpromulgated federal standard exists for an agricultural chemical, the ~~board~~department of environmental quality must adopt the most recently established nonpromulgated federal standard.

(2) The ~~board~~department of environmental quality is not required to adopt a standard or interim numerical standard for each agricultural chemical registered in the state. The only standards and interim numerical standards required are for those agricultural chemicals:

- (a) that are addressed by promulgated and nonpromulgated federal standards;
- (b) the presence of which has been verified in ground water as provided in 80-15-202; or
- (c) that the department and the department of environmental quality predict may appear in ground water, in accordance with the procedures and determinations specified in 80-15-202 and 80-15-203.

(3) If a promulgated federal standard has not been adopted or a nonpromulgated federal standard has not been published for an agricultural chemical for which the ~~board~~department of environmental quality is required to establish a standard or interim numerical standard as specified in subsections (2)(b) and (2)(c), the department of environmental quality shall request EPA to establish a promulgated or nonpromulgated federal standard. If the department of environmental quality determines that EPA cannot comply with the request within 15 days, the ~~board~~department of environmental quality shall adopt an interim numerical standard, provided that the ~~board~~department of environmental quality shall review the interim numerical standard whenever EPA adopts a promulgated federal standard or publishes a nonpromulgated federal standard for the agricultural chemical in question.

(4) The ~~board~~department of environmental quality may adopt an interim numerical standard that is different from either a promulgated or nonpromulgated federal standard if there is significant new and relevant technical information available that is scientifically valid. The ~~board~~department of environmental quality shall

review the interim numerical standard when EPA establishes or revises the promulgated or nonpromulgated federal standard for the agricultural chemical in question.

(5) The ~~board~~ department of environmental quality shall consider the following in adopting any interim numerical standard under either subsection (3) or (4):

(a) effects on a person weighing 70 kilograms and drinking 2 liters of water per day over a lifetime; and

(b) EPA's conclusions regarding the no observable effect level, including the margin of safety identified by EPA, when scientific data indicates oncogenic potential for the agricultural chemical and EPA has determined that a numerical risk assessment is not justified, is inappropriate, or does not serve as the primary toxicological basis for regulation.

(6) Nothing in this section may interfere with the ~~board's~~ department of environmental quality's responsibility to adopt rules and standards under Title 75, chapter 6."

Section 82. Section 82-4-102, MCA, is amended to read:

"82-4-102. Intent -- findings -- policy and purpose. (1) The legislature, mindful of its constitutional obligations under Article II, section 3, and Article IX of the Montana constitution, has enacted The Strip and Underground Mine Siting Act. It is the legislature's intent that the requirements of this part provide adequate remedies for the protection of the environmental life support system from degradation and provide adequate remedies to prevent unreasonable depletion and degradation of natural resources.

(2) It is the policy of this state to provide adequate remedies for the protection of the environmental life support system from degradation and provide adequate remedies to prevent unreasonable depletion and degradation of natural resources.

(3) It is the purpose of this part:

(a) to vest in the department the authority to adopt rules and to review new strip-mine and new underground-mine site locations and reclamation plans and either approve or disapprove those locations and plans and to exercise general administration and enforcement of this part;

~~(b) to vest in the board the authority to adopt rules;~~

~~(e)(b)~~ to satisfy the requirement of Article IX, section 2, of the constitution of this state that all lands

disturbed by the taking of natural resources be reclaimed; and

~~(d)~~(c) to ensure that adequate information is available on areas proposed for strip mining or underground mining so that mining and reclamation plans may be properly formulated to accommodate areas that are suitable for strip mining or underground mining.

(4) This part is an exercise of the general police power to provide for the health and welfare of the people."

Section 83. Section 82-4-112, MCA, is amended to read:

"82-4-112. Administration. (1) The department shall:

(a) adopt, after an opportunity for a hearing, general rules pertaining to new strip mines and to new underground mines and preparatory work to accomplish the purposes of this part, rules regarding filing of reports, issuance of permits, and other matters of procedure and administration;

~~(a)~~(b) exercise general supervision, administration, and enforcement of this part and all rules and orders adopted under this part;

~~(b)~~(c) issue orders requiring operators to adopt remedial measures necessary to comply with this part and rules adopted under this part;

~~(c)~~(d) order the suspension of any permit for failure to comply with this part, any rule adopted under this part, or a permit issued pursuant to this part;

~~(d)~~(e) issue an order revoking a permit when the requirements set forth by a notice of violation, order of suspension, or order requiring remedial measures have not been complied with according to the terms in the notice or order;

~~(e)~~(f) order the halting of any operation that is started without first having obtained a permit as required by this part;

~~(f)~~(g) conduct investigations and inspections necessary to ensure compliance with this part; and

~~(g)~~(h) encourage and conduct investigations, research, experiments, and demonstrations and collect and disseminate information relating to new strip mines, new underground mines, and reclamation of lands and waters affected by preparatory work.

(2) The ~~board~~board shall conduct hearings under this part."

Section 84. Section 82-4-123, MCA, is amended to read:

"82-4-123. Permit fee and surety bond. A fee of \$50 shall be paid before the mine-site location permit required in this part may be issued. The operator shall also file with the department a bond payable to the state of Montana with surety satisfactory to the department in the penal sum to be determined by the department of not less than \$200 or more than \$10,000 for each acre or fraction thereof of the area of land to be disturbed by preparatory work, with a minimum bond of \$5,000, conditioned upon the faithful performance of the requirements set forth in this part and of the rules of the ~~board~~ department. In determining the amount of the bond within the above limits, the department shall take into consideration the character and nature of the surface and subsurface disturbances, the future suitable use of the land involved, and the cost of removing or burying facilities, subsidence stabilization, water controls, backfilling, grading, topsoiling, and reclamation to be required. Notwithstanding the above limits, the bond may not be less than the total estimated cost to the state of completing the work described in the reclamation plan."

Section 85. Section 82-4-129, MCA, is amended to read:

"82-4-129. Noncompliance -- suspension of permits. (1) If any of the requirements of this part or rules or orders of the department have not been complied with within the time limits set by the department or by this part, the department shall serve a notice of noncompliance on the operator or, when necessary, the director of the department shall order the suspension of a permit. The notice or order must be handed to the operator in person or served by certified mail addressed to the permanent address shown on the application for a permit. The notice of noncompliance or order of suspension must specify in what respects the operator has failed to comply with this part or the rules or orders of the department and the board ~~and the board~~. If the operator has not complied with the requirement set forth in the notice of noncompliance or order of suspension within time limits set in the notice or order, the permit may be revoked by order of the ~~board~~ board and the performance bond forfeited to the department.

(2) Any additional strip-mining or underground-mining or mine-site location permits held by an operator whose mine-site location permit has been revoked must be suspended, and the operator is not eligible to receive another permit or to have the suspended permits reinstated until the operator has complied with all

the requirements of this part with respect to previous permits issued to the operator. An operator who has forfeited a bond is not eligible to receive another permit unless the land for which the bond was forfeited has been reclaimed without cost to the state or the operator has paid into the reclamation account a sum together with the value of the bond the department finds adequate to reclaim the lands. The department may not issue any additional permits to an operator who has repeatedly been in noncompliance or violation of this part."

Section 86. Section 82-4-205, MCA, is amended to read:

"82-4-205. Administration by department and board and board. (1) The department shall adopt, after an opportunity for a hearing, general rules pertaining to strip mining and to underground mining to accomplish the purposes of this part. The department may adopt rules with respect to filing of reports, issuance of permits, monitoring, and other matters of procedure and administration.

~~(1)~~(2) The department:

(a) shall exercise general supervision, administration, and enforcement of this part and all rules and orders adopted under this part;

(b) shall review for approval or disapproval all plans and specifications submitted by an operator for the method of operation, subsidence stabilization, water control, backfilling, grading, highwall reduction, and topsoiling and for the reclamation of the area of land affected by the operator's operation;

(c) shall issue orders requiring an operator to adopt the remedial measures necessary to comply with this part and rules adopted under this part;

(d) shall order the suspension of any permit for failure to comply with this part or a rule adopted under this part;

(e) shall issue an order revoking a permit when the requirements set forth by a notice of violation, order of suspension, or order requiring remedial measures have not been complied with according to the terms in the notice or order;

(f) shall order the halting of any operation that is started without first having obtained a permit as required by this part or order the cessation of operations not in compliance with this part in accordance with 82-4-251;

(g) shall conduct public hearings required under this part or rules adopted ~~by the board~~ pursuant to

this part;

(h) shall conduct investigations and inspections necessary to ensure compliance with this part; and

~~(i)~~(i) may encourage and conduct investigations, research, experiments, and demonstrations and collect and disseminate information relating to strip mining and to underground mining and reclamation of lands and waters affected by strip mining and underground mining.

~~(2) The board shall conduct contested case hearings under this part.~~

(2) The board shall conduct contested case hearings under this part."

Section 87. Section 82-4-207, MCA, is amended to read:

"82-4-207. Rulemaking -- in situ coal gasification. (1) Within 1 year of October 1, 2011, and in accordance with subsection (3), the ~~board~~ department shall adopt rules necessary to regulate underground mining using in situ coal gasification.

(2) Unless required by this part, the ~~board~~ department may not adopt a rule to regulate in situ coal gasification that is more stringent than the comparable federal regulations or guidelines that address the same circumstances.

(3) The ~~board~~ department shall solicit, document, consider, and address comments from the board of oil and gas conservation provided for in 2-15-3303 in developing rules pursuant to subsection (1)."

Section 88. Section 82-4-223, MCA, is amended to read:

"82-4-223. Surety bond. (1) Before a permit may be issued, the operator shall file with the department a bond payable to the state of Montana with surety satisfactory to the department in an amount to be determined by the department of not less than \$200 for each acre or fraction of an acre of the area of land affected, with a minimum bond of \$10,000, conditioned upon the faithful performance of the requirements set forth in this part and of the rules of the ~~board~~ department. The operator may elect to deposit cash, negotiable bonds, or negotiable certificates of deposit of any bank organized or transacting business in the United States. The cash deposit or market value of these securities must be equal to or greater than the amount of the bond required for the bonded area. The level of bonding must be relative to the degree of disturbance projected by the original permit and the annual report. A political subdivision or agency of the state need not file a bond

unless required to do so by the department. The department shall adjust the amount of bond required if the cost of reclamation changes.

(2) In determining the amount of the bond, the department shall take into consideration the character and nature of the overburden, the future suitable use of the land involved, and the cost of backfilling, grading, highwall reduction, subsidence stabilization, water control, topsoiling, and reclamation to be required, but the bond may not be less than the total estimated cost to the state of completing the work described in the reclamation plan."

Section 89. Section 82-4-226, MCA, is amended to read:

"82-4-226. Prospecting permit. (1) Except as provided in subsection (7), prospecting by any person on land not included in a valid strip-mining or underground-mining permit is unlawful without possessing a valid prospecting permit issued by the department as provided in this section. A prospecting permit may not be issued until the person submits an application, the application is examined, amended if necessary, and approved by the department, and an adequate reclamation performance bond is posted, all of which prerequisites must be done in conformity with the requirements of this part.

(2) An application for a prospecting permit filed pursuant to subsection (1) must be made in writing, notarized, and submitted to the department upon forms prepared and furnished by it. The application must include among other things a prospecting map and a prospecting reclamation plan of substantially the same character as required for a surface-mining or underground-mining map and reclamation plan under this part. The department shall determine by rules the precise nature of the required prospecting map and reclamation plan. Any applicant who intends to prospect by means of core drilling shall specify the location and number of holes to be drilled, methods to be used in sealing aquifers, and other information that may be required by the department. The applicant shall state what types of prospecting and excavating techniques will be employed on the affected land. The application must also include any other or further information that the department may require.

(3) Before the department gives final approval to the prospecting permit application, the applicant shall file with the department a reclamation and revegetation bond in a form and in an amount as determined in the same manner for strip-mining or underground-mining reclamation and revegetation bonds under this part.

(4) In the event that the holder of a prospecting permit desires to strip mine or underground mine the area covered by the prospecting permit and has fulfilled all the requirements for a strip-mining or underground-mining permit, the department may permit the postponement of the reclamation of the acreage prospected if that acreage is incorporated into the complete reclamation plan submitted with the application for a strip-mining or underground-mining permit. Any land actually affected by prospecting or excavating under a prospecting permit and not covered by the strip-mining or underground-mining reclamation plan must be promptly reclaimed.

(5) The prospecting permit is valid for 1 year and is subject to renewal, suspension, and revocation in the same manner as strip-mining or underground-mining permits under this part.

(6) The holder of the prospecting permit shall file with the department the same progress reports, maps, and revegetation progress reports as are required of strip-mining or underground-mining operators under this part.

(7) (a) Prospecting that is not conducted in an area designated unsuitable for coal mining pursuant to 82-4-227 or 82-4-228, that is not conducted for the purpose of determining the location, quality, or quantity of a mineral deposit, and that does not remove more than 250 tons of coal is not subject to subsections (1) through (6). However, a person who conducts prospecting described in this subsection (7)(a) shall file with the department a notice of intent to prospect that contains the information required by the department before commencing prospecting operations. If this prospecting substantially disturbs the natural land surface, it must be conducted in accordance with the performance standards of the ~~board's~~department's rules regulating the conduct and reclamation of prospecting operations that remove coal. The department may inspect these prospecting and reclamation operations at any reasonable time.

(b) (i) Prospecting conducted to determine the location, quality, or quantity of coal outside an area designated unsuitable that is not included in a valid strip-mining or underground-mining permit, that does not substantially disturb the land surface, and that does not remove more than 250 tons of coal is not subject to subsections (1) and (2) but may not be conducted without a valid prospecting permit issued pursuant to subsection (8).

(ii) For purposes of this subsection (7)(b), the drilling of coal prospecting holes, the installation and use of associated disposal pits, and the installation of ground water monitoring wells does not constitute substantial

disturbance.

(8) (a) An application for a coal prospecting permit required by subsection (7)(b) must contain:

(i) the name, address, and telephone number of the person who seeks to prospect;

(ii) the name, address, and telephone number of the person's representative who will be present at and responsible for conducting the prospecting activities;

(iii) a narrative describing the proposed prospecting area or a map of the prospecting area at a scale of 1:24,000 or greater showing:

(A) the general location of drill holes and trenches;

(B) existing and proposed roads;

(C) occupied dwellings;

(D) topographic features;

(E) bodies of water; and

(F) pipelines;

(iv) a copy of the documents upon which the applicant bases its legal right to prospect, including documentation that the owners of the land affected have been notified and understand that the department will make investigations and inspections to ensure compliance;

(v) a statement of the period of intended prospecting; and

(vi) a description of the method of prospecting to be used and the practices that will be followed to protect the environment and reclaim disturbed areas, including plugging of prospecting holes, in accordance with rules adopted by the ~~board~~ department.

(b) Within 10 working days of receipt of an application, the department shall notify the applicant in writing as to whether the application is complete and preliminarily acceptable. If the department determines that the application is not complete or not preliminarily acceptable, the department shall include a detailed identification of information necessary to cure the deficiency.

(c) Within 5 working days of receipt of the applicant's response to the identified deficiencies, the department shall review the response and notify the person as to whether the application is complete and preliminarily acceptable. If the department determines the application is not complete or preliminarily acceptable, the department shall notify the person in writing and include a detailed identification of information

necessary to make the application complete and preliminarily acceptable.

(d) When the department determines that the application is complete and preliminarily acceptable, the department shall notify the applicant in writing. The notification must include the amount of bond that is required to be posted in order for the permit to be issued.

(e) Upon receipt of the department's determination of preliminary acceptability, the applicant shall place an advertisement in a newspaper of general circulation in the locality of the proposed prospecting. The notice must describe the application and a place in the locality where the public may examine the application and must notify the public that it may submit written comments by delivering or mailing them to the department within 10 days following publication of the notice.

(f) After close of the public comment period, the department shall notify the applicant as to whether the application is acceptable. The department shall issue the notification within 5 working days of the close of the comment period if no comments are received and within 10 working days if comments are received. In the notice of acceptability, the department shall notify the applicant of any adjustment in the amount of the bond.

(g) A permit issued pursuant to this subsection (8) is subject to subsections (3) through (6)."

Section 90. Section 82-4-231, MCA, is amended to read:

"82-4-231. Submission of and action on reclamation plan. (1) As rapidly, completely, and effectively as the most modern technology and the most advanced state of the art will allow, each operator granted a permit under this part shall reclaim and revegetate the land affected by the operation, except that underground tunnels, shafts, or other subsurface excavations need not be revegetated. Under the provisions of this part and rules adopted by the ~~board~~ department, an operator shall prepare and carry out a method of operation, a plan of grading, backfilling, highwall reduction, subsidence stabilization, water control, and topsoiling and a reclamation plan for the area of land affected by the operation. In developing a method of operation and plans of grading, backfilling, highwall reduction, subsidence stabilization, water control, topsoiling, and reclamation, all measures must be taken to eliminate damages to landowners and members of the public, their real and personal property, public roads, streams, and all other public property from soil erosion, subsidence, landslides, water pollution, and hazards dangerous to life and property.

(2) The reclamation plan must set forth in detail the manner in which the applicant intends to comply

with 82-4-232 through 82-4-234 and this section and the steps to be taken to comply with applicable air and water quality laws and rules and any applicable health and safety standards.

(3) The application for a permit or major revision of a permit, which must contain the reclamation plan, must be submitted to the department.

(4) The department shall determine whether the application is administratively complete. An application is administratively complete if it contains information addressing each application requirement in 82-4-222 and the rules implementing that section and all information necessary to initiate processing and public review. The department shall notify the applicant in writing of its determination no later than 90 days after submittal of the application. If the department determines that the application is not administratively complete, it shall specify in the notice those items that the application must address. The application is presumed administratively complete as to those requirements not specified in the notice.

(5) If the department determines that an environmental impact statement on the application is required, it shall notify the applicant in writing at the same time it gives the applicant notice pursuant to subsection (4).

(6) After the applicant receives notice that the application is administratively complete, the applicant shall publish notice of filing of the application once a week for 4 consecutive weeks in a newspaper of general circulation in the locality of the proposed operation. The department shall notify various local governmental bodies, planning agencies, sewage and water treatment authorities, and water companies in the locality in which the proposed mining will take place of the application and provide a reasonable time for them to submit written comments. Any person having an interest that is or may be adversely affected or the officer or head of any federal, state, or local governmental agency or authority may file written objections to the proposed initial or revised application for permit or major revision within 30 days of the applicant's published notice. If written objections are filed and an objector requests an informal conference, the department shall hold an informal conference in the locality of the proposed operation within 30 days of receipt of the request. The department shall notify the applicant and all parties to the informal conference of its decision and the reasons for its decision within 60 days of the informal conference. The department may arrange with the applicant upon request by any party to the administrative proceeding for access to the proposed mining area for the purpose of gathering information relevant to the proceeding.

(7) The filing of written objections or a request for an informal conference may not preclude the department from proceeding with its review of the application as specified in subsection (8).

(8) (a) The department shall review each administratively complete application and determine the acceptability of the application. During the review, the department may propose modifications to the application or delete areas from the application in accordance with the requirements of 82-4-227. A complete application is considered acceptable when the application is in compliance with all of the applicable requirements of this part and the regulatory program pursuant to this part.

(b) If the applicant significantly modifies the application after the application has been determined administratively complete in accordance with subsection (4), the department shall under this section either deny the application or conduct a new review, including an administrative completeness determination, public notice, and objection period.

(c) If an environmental impact statement is determined to be necessary prior to making a permit decision, the department shall complete and publish the final environmental impact statement at least 15 days prior to the date of issuance of the written findings pursuant to subsection (8)(f).

(d) Except as provided in 75-1-205(4) and 75-1-208(4)(b), within 120 days after it determines that an application is administratively complete, the department shall notify the applicant in writing whether the application is or is not acceptable. If the application is not acceptable, the department shall set forth the reasons why it is not acceptable, and it may propose modifications, delete areas, or reject the entire application. All items not specified as unacceptable in the department's notification are presumed to be acceptable. Except as provided in 75-1-208(4)(b), if the applicant revises the application in response to a notice of unacceptability, the department shall review the revised application and notify the applicant in writing within 120 days of the date of receipt whether the revised application is acceptable. If the revision constitutes a significant modification under subsection (8)(b), the department shall conduct a new review, beginning with an administrative completeness determination.

(e) When the application is determined to be acceptable, the department shall publish notice of its determination once a week for 2 consecutive weeks in a newspaper of general circulation in the locality of the proposed operation. Any person having an interest that is or may be adversely affected may file a written objection to the determination within 10 days of the department's last published notice. If a written objection is

filed and an objector requests an informal conference, the department shall hold an informal conference in the locality of the proposed operation within 20 days of receipt of the request. The department shall notify the applicant and all parties to the informal conference of its decision and the reasons for the decision within 10 days of the informal conference.

(f) Except as provided in 75-1-205(4) and 75-1-208(4)(b), the department shall prepare written findings granting or denying the permit or major revision application in whole or in part not later than 45 days from the date the application is determined acceptable. However, if lands subject to the federal lands program are included in the application for permit or major revision, the department shall prepare and submit written findings to the federal regulatory authority. If the department's decision is to grant the permit, the department shall issue the permit on the date of its written finding or, if any federal concurrence is necessary, on the date when the concurrence is obtained. If the application is denied, specific reasons for the denial must be set forth in the written notification to the applicant.

(g) If the department fails to act within the times specified in this subsection (8), it shall immediately ~~notify the board~~ notify the board in writing of its failure to comply and the reasons for the failure to comply.

(9) The applicant, a landowner, or any person with an interest that is or may be adversely affected by the department's permit decision may within 30 days of that decision submit a written notice requesting a hearing. The notice must contain the grounds upon which the requester contends that the decision is in error. The hearing must be started within 30 days of the request. For purposes of a hearing, the ~~board~~ board or its hearings officer may order site inspections of the area pertinent to the application. The ~~board~~ board shall within 20 days of the hearing notify the person who requested the hearing, by certified mail, and all other persons, by regular mail, of the findings and decisions. A person who presided at the informal conference may not preside at the hearing or participate in the decision.

(10) In addition to the method of operation, grading, backfilling, highwall reduction, subsidence stabilization, water control, topsoiling, and reclamation requirements of this part and rules adopted under this part, the operator, consistent with the directives of subsection (1), shall:

(a) bury under adequate fill all toxic materials, shale, mineral, or any other material determined by the department to be acid-producing, toxic, undesirable, or creating a hazard;

(b) as directed by rules, seal off tunnels, shafts, or other openings or any breakthrough of water

creating a hazard;

(c) impound, drain, or treat all runoff or underground mine waters so as to reduce soil erosion, damage to grazing and agricultural lands, and pollution of surface and subsurface waters;

(d) remove or bury all metal, lumber, and other refuse resulting from the operation;

(e) use explosives in connection with the operation only in accordance with department regulations designed to minimize noise, damage to adjacent lands, and water pollution and ensure public safety and for other purposes;

(f) adopt measures to prevent land subsidence unless the department approves a plan for inducing subsidence into an abandoned operation in a predictable and controlled manner, with measures for grading, topsoiling, and revegetating the subsided land surface. In order for a controlled subsidence plan to be approved, the applicant is required to show that subsidence will not cause a direct or indirect hazard to any public or private buildings, roads, facilities, or use areas, constitute a hazard to human life or health or to domestic livestock or a viable agricultural operation, or violate any other restrictions the department may consider necessary.

(g) stockpile and protect from erosion all mining and processing wastes until these wastes can be disposed of according to the provisions of this part;

(h) deposit as much stockpiled waste material as possible back into the mine voids upon abandonment in a manner that will prevent or minimize land subsidence. The remaining waste material must be disposed of as provided by this part and the rules of the ~~board~~ department.

(i) seal all portals, entryways, drifts, shafts, or other openings between the surface and underground mine workings when no longer needed;

(j) to the extent possible using the best technology currently available, minimize disturbances and adverse impacts of the operation on fish, wildlife, and related environmental values and achieve enhancement of those resources when practicable;

(k) minimize the disturbances to the prevailing hydrologic balance at the mine site and in adjacent areas and to the quality and quantity of water in surface water and ground water systems both during and after strip- or underground-coal-mining operations and during reclamation by:

(i) avoiding acid or other toxic mine drainage by measures including but not limited to:

- (A) preventing or removing water from contact with toxic-producing deposits;
- (B) treating drainage to reduce toxic content that adversely affects downstream water upon being released to watercourses;
- (C) casing, sealing, or otherwise managing boreholes, shafts, and wells and keeping acid or other toxic drainage from entering ground and surface waters;
- (ii) (A) conducting strip- or underground-mining operations so as to prevent, to the extent possible using the best technology currently available, additional contributions of suspended solids to streamflow or runoff outside the permit area, but the contributions may not be in excess of requirements set by applicable state or federal law;
- (B) constructing any siltation structures pursuant to subsection (10)(k)(ii)(A) prior to commencement of strip- or underground-mining operations, with the structures to be certified by a qualified registered engineer and to be constructed as designed and as approved in the reclamation plan;
- (iii) cleaning out and removing temporary or large settling ponds or other siltation structures from drainways after disturbed areas are revegetated and stabilized and depositing the silt and debris at a site and in a manner approved by the department;
- (iv) restoring recharge capacity of the mined area to approximate premining conditions;
- (v) avoiding channel deepening or enlargement in operations that requires the discharge of water from mines;
- (vi) preserving throughout the mining and reclamation process the essential hydrologic functions of alluvial valley floors in the arid and semiarid areas of the country;
- (vii) designing and constructing reclaimed channels of intermittent streams and perennial streams to ensure long-term stability; and
- (viii) any other actions that the department may prescribe;
- (l) conduct strip- or underground-mine operations in accordance with the approved coal conservation plan;
- (m) stabilize and protect all surface areas, including spoil piles, to effectively control air pollution;
- (n) seal all auger holes with an impervious and noncombustible material in order to prevent drainage except when the department determines that the resulting impoundment of water in the auger holes may create

a hazard to the environment or the public health and safety;

(o) develop contingency plans to prevent sustained combustion;

(p) refrain from construction of roads or other access ways up a streambed or drainage channel or in proximity to the channel so as to seriously alter the normal flow of water;

(q) meet other criteria that are necessary to achieve reclamation in accordance with the purposes of this part, taking into consideration the physical, climatological, and other characteristics of the site;

(r) with regard to underground mines, eliminate fire hazards and otherwise eliminate conditions that constitute a hazard to health and safety of the public;

(s) locate openings for all new drift mines working acid-producing or iron-producing coal seams in a manner that prevents a gravity discharge of water from the mine.

(11) An operator may not throw, dump, pile, or permit the throwing, dumping, or piling or otherwise placing of any overburden, stones, rocks, mineral, earth, soil, dirt, debris, trees, wood, logs, or any other materials or substances of any kind or nature beyond or outside of the area of land that is under permit and for which a bond has been posted under 82-4-223 or place the materials described in this section in a way that normal erosion or slides brought about by natural physical causes will permit the materials to go beyond or outside of that area of land. An operator shall conduct the strip- or underground-mining operation in a manner that protects areas outside the permit area."

Section 91. Section 82-4-232, MCA, is amended to read:

"82-4-232. Area mining required -- bond -- alternative plan. (1) (a) Area strip mining, a method of operation that does not produce a bench or fill bench, is required where strip mining is proposed. The area of land affected must be backfilled and graded to the approximate original contour of the land. However:

(i) consistent with the adjacent unmined landscape elements, the operator may propose and the department may approve regraded topography gentler than premining topography in order to enhance the postmining land use and develop a postmining landscape that will provide greater moisture retention, greater stability, and reduced soil losses from runoff and erosion;

(ii) postmining slopes may not exceed the angle of repose or lesser slope as is necessary to achieve a long-term static safety factor of 1.3 or greater and to prevent slides;

(iii) permanent impoundments may be approved if they are suitable for the postmining land use and otherwise meet the requirements of this part, as provided by ~~board~~department rules; and

(iv) reclaimed topography must be suitable for the approved postmining land use.

(b) Spoil from the first cut is not required to be transported to the last cut if highwalls are eliminated, box cut spoils are graded to blend in with the surrounding terrain, and the approximate original contour of the land is achieved.

(c) When directed by the department, the operator shall construct in the final grading diversion ditches, depressions, or terraces that will accumulate or control the water runoff.

(2) In addition to the backfilling and grading requirements, the operator's method of operation on steep slopes may be regulated and controlled according to rules adopted by the ~~board~~department. These rules may require any measure to accomplish the purpose of this part.

(3) For coal mining on prime farmlands, the ~~board~~department shall establish by rule specifications for soil removal, storage, replacement, and reconstruction, and the operator must as a minimum be required to:

(a) (i) segregate the A horizon of the natural soil, except when it can be shown that other available soil materials will create a final soil having a greater productive capacity; and

(ii) if not used immediately, stockpile this material separately from other spoil and provide needed protection from wind and water erosion or contamination by other acid or toxic material;

(b) (i) segregate the B horizon of the natural soil, or underlying C horizon or other strata, or a combination of the horizons or other strata that are shown to be both texturally and chemically suitable for plant growth and that can be shown to be equally or more favorable for plant growth than the B horizon in sufficient quantities to create in the regraded final soil a root zone of comparable depth and quality to that that existed in the natural soil; and

(ii) if not used immediately, stockpile this material separately from other spoil and provide needed protection from wind and water erosion or contamination by acid or toxic material;

(c) replace and regrade the root zone material described in subsection (3)(b) with proper compaction and uniform depth over the regraded spoil material; and

(d) redistribute and grade in a uniform manner the surface soil horizon described in subsection (3)(a).

(4) All available topsoil must be removed in a separate layer, guarded from erosion and pollution, and

kept in a condition so that it can sustain vegetation of at least the quality and variety it sustained prior to removal. However, the operator shall accord substantially the same treatment to any subsurface deposit of material that is capable, as determined by the department, of supporting surface vegetation virtually as well as the present topsoil. After the operation has been backfilled and graded, the topsoil or the best available subsurface deposit of material that is best able to support vegetation must be returned as the top layer.

(5) As determined by rules of the ~~board~~ department, time limits must be established requiring backfilling, grading, subsidence stabilization, water control, highwall reduction, topsoiling, planting, and revegetation to be kept current. All backfilling, subsidence stabilization, sealing, grading, and topsoiling must be completed before necessary equipment is moved from the operation.

(6) (a) The permittee may file an application with the department for the release of all or part of a performance bond. The application must contain a proposed public notice of the precise location of the land affected, the number of acres for which bond release is sought, the permit and the date approved, the amount of the bond filed and the portion sought to be released, the type and appropriate dates of reclamation work performed, and a description of the results achieved as they relate to the permittee's approved reclamation plan. In addition, as part of any bond release application, the permittee shall submit copies of letters that the permittee has sent to adjoining property owners, local governmental bodies, planning agencies, and sewage and water treatment authorities or water companies in the locality of the operation, notifying them of the permittee's intention to seek release from the bond.

(b) The department shall determine whether the application is administratively complete. An application is administratively complete if it includes:

- (i) the location and acreage of the land for which bond release is sought;
- (ii) the amount of bond release sought;
- (iii) a description of the completed reclamation, including the date of performance;
- (iv) a discussion of how the results of the completed reclamation satisfy the requirements of the approved reclamation plan; and
- (v) information required by rules implementing this part.

(c) The department shall notify the applicant in writing of its determination no later than 60 days after submittal of the application. If the department determines that the application is not administratively complete, it

shall specify in the notice those items that the application must address. After an application for bond release has been determined to be administratively complete by the department, the permittee shall publish a public notice that has been approved as to form and content by the department at least once a week for 4 successive weeks in a newspaper of general circulation in the locality of the mining operation.

(d) Any person with a valid legal interest that might be adversely affected by the release of a bond or the responsible officer or head of any federal, state, or local governmental agency that has jurisdiction by law or special expertise with respect to any environmental, social, or economic impact involved in the operation or is authorized to develop and enforce environmental standards with respect to the operation may file written objections to the proposed release of bond to the department within 30 days after the last publication of the notice. If written objections are filed and a hearing is requested, the department shall hold a public hearing in the locality of the operation proposed for bond release or in Helena, at the option of the objector, within 30 days of the request for hearing. The department shall inform the interested parties of the time and place of the hearing. The date, time, and location of the public hearing must be advertised by the department in a newspaper of general circulation in the locality for 2 consecutive weeks. Within 30 days after the hearing, the department shall notify the permittee and the objector of its final decision.

(e) Without prejudice to the rights of the objector or the permittee or the responsibilities of the department pursuant to this section, the department may establish an informal conference to resolve written objections.

(f) For the purpose of the hearing under subsection (6)(d), the department may administer oaths, subpoena witnesses or written or printed materials, compel the attendance of witnesses or the production of materials, and take evidence, including but not limited to conducting inspections of the land affected and other operations carried on by the permittee in the general vicinity. A verbatim record of each public hearing required by this section must be made, and a transcript must be made available on the motion of any party or by order of the department.

(g) If the applicant significantly modifies the application after the application has been determined to be administratively complete, the department shall conduct a new review, including an administrative completeness determination. A significant modification includes but is not limited to:

(i) the notification of an additional property owner, local governmental body, planning agency, or

sewage and water treatment authority of the permittee's intention to seek a bond release;

(ii) a material increase in the acreage for which a bond release is sought or in the amount of bond release sought; or

(iii) a material change in the reclamation for which a bond release is sought or the information used to evaluate the results of that reclamation.

(h) The department shall, within 30 days of determining that the application is administratively complete or as soon as weather permits, conduct an inspection and evaluation of the reclamation work involved. In the evaluation, the department shall consider, among other things, the degree of difficulty in completing any remaining reclamation, whether pollution of surface and subsurface water is occurring, the probability of continuance or future occurrence of the pollution, and the estimated cost of abating the pollution.

(i) The department shall review each administratively complete application to determine the acceptability of the application. A complete application is acceptable if the application is in compliance with all of the applicable requirements of this part, the rules adopted under this part, and the permit.

(j) (i) The department shall notify the applicant in writing regarding the acceptability of the application no later than 60 days from the date of the inspection.

(ii) If the department determines that the application is not acceptable, it shall specify in the notice those items that the application must address.

(iii) If the applicant revises the application in response to a notice of unacceptability, the department shall review the revised application and notify the applicant in writing within 60 days of the date of receipt as to whether the revised application is acceptable.

(iv) If the revision constitutes a significant modification, the department shall conduct a new review, beginning with an administrative completeness determination.

(v) A significant modification includes but is not limited to:

(A) the notification of an additional property owner, local governmental body, planning agency, or sewage and water treatment authority of the permittee's intention to seek a bond release;

(B) a material increase in the acreage for which a bond release is sought or the amount of bond release sought; or

(C) a material change in the reclamation for which a bond release is sought or the information used to

evaluate the results of that reclamation.

(k) The department shall release the bond in whole or in part if it is satisfied the reclamation covered by the bond or portion of the bond has been accomplished as required by this part according to the following schedule:

(i) When the permittee completes the plugging, backfilling, regrading, and drainage control of a bonded area in accordance with the approved reclamation plan, the department shall release 60% of the bond or collateral for the applicable permit area.

(ii) After revegetation has been established on the regraded lands in accordance with the approved reclamation plan, the department shall, for the period specified for operator responsibility of reestablishing revegetation, retain that amount of bond for the revegetated area that would be sufficient for a third party to cover the cost of reestablishing revegetation. Whenever a silt dam is to be retained as a permanent impoundment, the portion of bond may be released under this subsection (6)(k)(ii) if provisions for sound future maintenance by the operator or the landowner have been made with the department. Any part of the bond may not be released under this subsection (6)(k)(ii):

(A) as long as the lands to which the release would be applicable are contributing suspended solids to streamflow or runoff outside the permit area in excess of the requirements of 82-4-231(10)(k); or

(B) before soil productivity for prime farm lands to which the release would be applicable has returned to equivalent levels of yield as nonmined land of the same soil type in the surrounding area under equivalent management practices, as determined from the soil survey.

(iii) When the permittee has successfully completed all prospecting, mining, and reclamation activities, the department shall release the remaining portion of the bond, but not before the expiration of the period specified for responsibility and not until all reclamation requirements of this part are fully met.

(l) If the department disapproves the application for release of the bond or a portion of the bond, it shall:

(i) provide to the permittee detailed written findings demonstrating that the reclamation covered by the bond or a portion of the bond has not been accomplished as required by this part; and

(ii) recommend corrective actions necessary to secure the release and allowing opportunity for a public hearing.

(m) When an application for total or partial bond release is filed with the department, it shall notify the municipality or county in which a prospecting or mining operation is located by certified mail at least 30 days prior to the release of all or a portion of the bond.

(7) All disturbed areas must be reclaimed in a timely manner to conditions that are capable of supporting the land uses that they were capable of supporting prior to any mining or to higher or better uses as approved pursuant to subsection (8).

(8) (a) An operator may propose a higher or better use as an alternative postmining land use. If the landowner is not the operator, the operator shall submit written documentation of the concurrence of the landowner or the land management agency with jurisdiction over the land. The department may approve the proposed alternative postmining land use only if it meets all of the following criteria:

- (i) There is a reasonable likelihood for achievement of the alternative land use.
- (ii) The alternative land use does not present any actual or probable hazard to the public health or safety or any threat of water diminution or pollution.
- (iii) The alternative land use will not:
 - (A) be impractical or unreasonable;
 - (B) be inconsistent with applicable land use policies or plans;
 - (C) involve unreasonable delay in implementation; or
 - (D) cause or contribute to violation of federal, state, or local law.
- (b) As used in this section, the term "landowner" includes a person who has sold the surface estate to the operator with an option to repurchase the surface estate after mining and reclamation are complete.

(9) The reclamation plan must incorporate appropriate wildlife habitat enhancement features that are integrated with cropland, grazing land, pastureland, land occasionally cut for hay, or other uses in order to enhance habitat diversity, with emphasis on big game animals, game birds, and threatened and endangered species that have been documented to live in the area of land affected, and to enhance wetlands and riparian areas along rivers and streams and bordering ponds and lakes. Incorporation of wildlife habitat enhancement features does not constitute a change in land use to fish and wildlife habitat and may not interfere with the designated land use.

(10) Facilities existing prior to mining, including but not limited to public roads, utility lines, railroads, or

pipelines, may be replaced as part of the reclamation plan."

Section 92. Section 82-4-234, MCA, is amended to read:

"82-4-234. Commencement of reclamation. The operator shall commence the reclamation of the area of land affected by the operator's operation as soon as possible after the beginning of strip mining or underground mining of that area in accordance with plans previously approved by the department. Those grading, backfilling, subsidence stabilization, topsoiling, and water management practices that are approved in the plans must be kept current with the operation as defined by rules of the ~~board~~ department, and a permit or supplement to a permit may not be issued if, in the discretion of the department, these practices are not current."

Section 93. Section 82-4-235, MCA, is amended to read:

"82-4-235. Determination of successful revegetation -- final bond release. (1) Success of revegetation must be judged on the effectiveness of the vegetation for the approved postmining land use, the extent of cover compared to the cover occurring in the natural vegetation, and the requirements of 82-4-233. Standards for success are:

(a) for areas reclaimed for use as cropland, crop production must be at least equal to that achieved prior to mining based on comparison with historical data, comparable reference areas, or United States department of agriculture publications applicable to the area of the operation, as referenced in rules adopted by the ~~board~~ department;

(b) for areas reclaimed for use as pastureland or grazing land, the ground cover and production of living plants on the revegetated area must be at least equal to that of a reference area or other standard approved by the department as appropriate for the postmining land use;

(c) for areas reclaimed for use as fish and wildlife habitat, forestry, or recreation, success of revegetation must be determined on the basis of approved tree density standards or shrub density standards, or both, and vegetative ground cover required to achieve the postmining land use;

(d) reestablished vegetation is considered effective if the postmining land use is achieved and erosion is controlled;

(e) reestablished vegetation is considered permanent if it is diverse and effective at the end of the 10-year responsibility period specified under subsection (2); and

(f) plant species composing the reestablished vegetation are considered to have the same seasonal characteristics of growth as the original vegetation, to be capable of regeneration and plant succession, and to be compatible with the plant and animal species of the area if those plant species are native to the area or are introduced species approved by the department as desirable and necessary to achieve the postmining land use.

(2) Inspection and evaluation of reclaimed vegetative cover must be made as soon as possible following an application for final bond release to determine if a satisfactory stand has been established. If the department determines that a satisfactory vegetative cover has been established, it shall release the remaining bond held on the area reclaimed after public notice and an opportunity for hearing as provided in 82-4-232(6). Except as provided in subsection (3), the remaining bond may not be released prior to a period of 10 years after the last year of augmented seeding, fertilizing, irrigation, or other work required under this part for those operations or portions of operations that were seeded after May 2, 1978, or prior to a period of 5 years after initial planting for all exploration activities and all other operations.

(3) (a) Vegetative cover of water management facilities and other support facilities composing no more than 10% of the area for which bond release is sought is not subject to the 10-year responsibility period. Water management facilities and other support facilities include sedimentation ponds, diversions, other water management structures, soils stockpiles, and access roads.

(b) Vegetative cover of water management facilities and other support facilities composing no more than 10% of the area for which bond release is sought is eligible for bond release if the vegetative cover otherwise meets the reclamation standards in subsection (1).

(4) (a) Notwithstanding the provisions of subsections (2) and (3), on land from which coal was removed prior to May 3, 1978, and on land from which coal was not removed and that was not used, disturbed, or redisturbed in connection with this part after May 2, 1978, pursuant to a permit issued by the department under this part, the department may approve for release a bond on an area of reclaimed vegetation that meets the following criteria:

(i) it was seeded using a seed mixture that was approved by the department under the criteria

established pursuant to 82-4-233 and that included introduced species; and

(ii) at least one of the following conditions exists:

(A) the standards of 82-4-233(1) are otherwise achieved;

(B) the operator has demonstrated substantial usefulness of the reclaimed vegetation for grazing of livestock;

(C) the operator demonstrates that the reclaimed vegetation has substantial value as a habitat component for wildlife present in the area; or

(D) the topography and soils are suitable for conversion to cropland or hayland consistent with the standards of 82-4-232 and the department approves and the operator completes that conversion.

(b) On lands that meet the criteria described in subsection (4)(a), interseeding or supplemental planting may be performed without reinitiating the liability period provided in subsection (2)."

Section 94. Section 82-4-239, MCA, is amended to read:

"82-4-239. Reclamation. (1) The department may have reclamation work done by its employees, by employees of other governmental agencies, by soil conservation districts, or through contracts with qualified persons. The ~~board~~ department may construct, operate, and maintain plants for the control and treatment of water pollution resulting from mine drainage.

(2) Any funds or any public works programs available to the department must be used and expended to reclaim and rehabilitate lands that have been subjected to strip mining or underground mining and that have not been reclaimed and rehabilitated in accordance with the standards of this part. The department shall cooperate with federal, state, and private agencies to engage in cooperative projects under this section.

(3) Agents, employees, or contractors of the department may enter upon any land for the purpose of conducting studies or exploratory work to determine whether the land has been strip- or underground-mined and not reclaimed and rehabilitated in accordance with the requirements of this part and to determine the feasibility of restoration, reclamation, abatement, control, or prevention of any adverse effects of past coal-mining practices. Upon request of the director of the department, the attorney general shall bring an injunctive action to restrain any interference with the exercise of the right to enter and inspect granted in this subsection. The action must be brought in the county in which the mine is located.

(4) (a) The department shall take the actions described in subsection (4)(b) when it makes a finding of fact that:

- (i) land or water resources have been adversely affected by past coal-mining practices;
- (ii) the adverse effects are at a stage at which, in the public interest, action to restore, reclaim, abate, control, or prevent should be taken; and
- (iii) the owners of the land or water resources where entry must be made to restore, reclaim, abate, control, or prevent the adverse effects of past coal-mining practices are not known or readily available or the owners will not give permission for the department or its agents, employees, or contractors to enter upon the property to restore, reclaim, abate, control, or prevent the adverse effects of past coal-mining practices.

(b) After giving notice by mail to the owner, if known, and any purchaser under contract for deed, if known, or, if neither is known, by posting notice on the premises and advertising in a newspaper of general circulation in the county in which the land lies, the agents, employees, or contractors of the department may enter on the property adversely affected by past coal-mining practices and on any other property necessary for access to the mineral property to do all things necessary or expedient to restore, reclaim, abate, control, or prevent the adverse effects of past coal-mining practices.

(c) Action taken under subsection (4)(b) is not an act of condemnation of property or of trespass, but rather is an exercise of the power granted by Article IX, sections 1 and 2, of the Montana constitution.

(5) (a) Within 6 months after the completion of projects to restore, reclaim, abate, control, or prevent adverse effects of past coal-mining practices on privately owned land, the department shall itemize the money expended and may file a statement of those expenses in the office of the clerk and recorder of the county in which the land lies, together with a notarized appraisal by an independent appraiser of the value of the land before the restoration, reclamation, abatement, control, or prevention of adverse effects of past coal-mining practices if the money expended resulted in a significant increase in property value. The statement constitutes a lien upon the land. The lien may not exceed the amount determined by the appraisal to be the increase in the market value of the land as a result of the restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal-mining practices. A lien under this subsection (5)(a) may not be filed against the property of a person who owned the surface prior to May 2, 1977, and who did not consent to, participate in, or exercise control over the mining operation that necessitated the reclamation performed under this part.

(b) The landowner may petition within 60 days of the filing of the lien to determine the increase in the market value of the land as a result of the restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal-mining practices. The amount reported to be the increase in value of the premises constitutes the amount of the lien and must be recorded with the statement provided for in this section. Any party aggrieved by the decision may appeal as provided by law.

(c) The lien provided in this section must be recorded at the office of the county clerk and recorder. The statement constitutes a lien upon the land as of the date of the expenditure of the money and has priority as a lien second only to the lien of real estate taxes imposed upon the land.

(6) The department may acquire the necessary property by gift or purchase. A gift or purchase must be approved by the board of land commissioners. If the property cannot be acquired by gift or purchase at a reasonable cost, proceedings may be instituted in the manner provided in Title 70, chapter 30, against all nonaccepting landholders if:

(a) the property is necessary for successful reclamation;

(b) the acquired land after restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal-mining practices will serve recreation and historic purposes or conservation and reclamation purposes or provide open space benefits; and

(c) (i) permanent facilities, such as treatment plants or relocated stream channels, will be constructed on the land for the restoration, reclamation, abatement, control, or prevention of the adverse effects of past strip- or underground-coal-mining practices; or

(ii) acquisition of coal refuse disposal sites and all coal refuse on the land will serve the purposes of this part because public ownership is desirable to meet emergency situations and prevent recurrences of the adverse effects of past coal-mining practices."

Section 95. Section 82-4-254, MCA, is amended to read:

"82-4-254. Violation -- penalty -- waiver. (1) (a) Except as provided in subsection (2), a person or operator who violates any of the provisions of this part, rules adopted or orders issued under this part, or term or condition of a permit and any director, officer, or agent of a corporation who purposely or knowingly authorizes, orders, or carries out a violation shall pay an administrative penalty of not less than \$100 or more

than \$5,000 for the violation and an additional administrative penalty of not less than \$100 or more than \$5,000 for each day during which a violation continues and may be enjoined from continuing the violations as provided in this section. A person or operator who fails to correct a violation within the period permitted by law, rule ~~of the board~~, or order of the department must be assessed a penalty of not less than \$750 for each day, up to 30 days, during which the failure or violation continues.

(b) Penalties assessed under this section must be determined in accordance with the penalty factors in 82-4-1001.

(c) The period permitted for correction of a violation does not, in the case of any review proceeding under 82-4-251(6), end until entry of a final order suspending the abatement requirements or until entry of an order of court ordering suspension of the abatement requirements. If the failure to abate continues for more than 30 days, the department shall, within 30 days after the 30-day period, take appropriate action pursuant to 82-4-251(3) or request action under subsection (4) or (6) of this section.

(2) The department may waive the penalty for a minor violation of this part, a rule adopted or an order issued under this part, or a term or condition of a permit if the department determines that the violation is not of potential harm to public health, public safety, or the environment and does not impair the administration of this part. The department may not waive a penalty assessed under this section if the person or operator fails to abate the violation as directed under 82-4-251. ~~The board~~ department shall adopt rules to implement and administer a procedure for waiver of a penalty under this subsection.

(3) (a) To assess an administrative penalty under this section, the department shall issue a notice of violation and penalty order to the person or operator, unless the penalty is waived pursuant to subsection (2). The notice and order must specify the provision of this part, rule adopted or order issued under this part, or term or condition of a permit that is violated and must contain findings of fact, conclusions of law, and a statement of the proposed administrative penalty. The notice and order must be served personally or by certified mail. Service by mail is complete 3 business days after the date of mailing. The notice and order become final unless, within 30 days after the order is served, the person or operator to whom the order was issued requests a hearing before the ~~board~~ board. By submitting to the ~~board~~ board a written request within 30 days of service of the notice of violation, stating the reason for the request, the person or operator is entitled to a hearing before the ~~board~~ board under 82-4-206 on the issues of whether the alleged violation has occurred

and whether the penalty proposed to be assessed is proper. On receipt of a request, the ~~board~~board shall schedule a hearing. After a hearing, the ~~board~~board shall make findings of fact and issue a written decision as to the occurrence of the violation and the amount of penalty warranted. If the ~~board~~board finds that the violation occurred and a penalty is warranted, it shall order the payment of the penalty. If the time for requesting a hearing expires without a hearing request, the person or operator shall remit the amount of the penalty within 30 days of the expiration of the period for requesting a hearing.

(b) If the person or operator to whom a final order is issued under subsection (3)(a) wishes to obtain judicial review of the order, the person or operator shall submit with any assessed penalty a statement that the penalty is being paid under protest and the department shall hold the payment in escrow until judicial review is complete. Any person or operator who fails to request and submit testimony at the hearing provided for in subsection (3)(a) or who fails to pay any assessed penalty under protest within 30 days of the order assessing the penalty forfeits the right to seek judicial review of the violation and penalty determinations.

(c) Penalties provided for in this section are recoverable in an action brought by the department. The action must be filed in the district court of the first judicial district, Lewis and Clark County, if mutually agreed on by the parties in the action, or in the district court having jurisdiction over the defendant.

(4) The department may bring an action for a restraining order or temporary or permanent injunction against an operator or other person who:

(a) violates, threatens to violate, or fails or refuses to comply with any order or decision issued under this part;

(b) interferes with, hinders, or delays the department in carrying out the provisions of this part;

(c) refuses to admit an authorized representative of the department to the permit area;

(d) refuses to permit inspection of the permit area by an authorized representative of the department;

(e) refuses to furnish any information or report requested by the department in furtherance of the provisions of this part; or

(f) refuses to permit access to and copying of records that the department determines to be necessary in carrying out the provisions of this part.

(5) Any relief granted by a court under subsection (4)(a) continues in effect until the completion or final termination of all proceedings for review of relief granted under this part unless, prior to the final

determination, the district court granting the relief sets it aside or modifies it.

(6) A person who violates any of the provisions of this part or any determination or order issued under this part or who purposely or knowingly violates any permit condition issued under this part is guilty of a misdemeanor and shall be fined an amount not less than \$500 and not more than \$10,000 or be imprisoned for not more than 1 year, or both. Each day on which the violation occurs constitutes a separate offense.

(7) A person who knowingly makes any false statement, representation, or certification or knowingly fails to make any statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained pursuant to this part shall upon conviction be punished by a fine of not more than \$10,000 or by imprisonment for not more than 1 year, or both.

(8) A person who except as permitted by law purposely or knowingly resists, prevents, impedes, or interferes with the department or its agents in the performance of duties pursuant to this part shall be punished by a fine of not more than \$5,000 or by imprisonment for not more than 1 year, or both.

(9) An employee of the department performing any function or duty under this part may not have a direct or indirect financial interest in any strip- or underground-coal-mining operation. A person who knowingly violates the provisions of this subsection shall upon conviction be punished by a fine of not more than \$2,500 or by imprisonment of not more than 1 year, or both.

(10) Within 30 days after receipt of full payment of an administrative penalty assessed under this section, the department shall issue a written release of civil liability for the violations for which the penalty was assessed."

Section 96. Section 82-4-304, MCA, is amended to read:

"82-4-304. Exemption -- works performed prior to promulgation of rules. This part is not applicable to any exploration or mining work performed prior to the date of promulgation of the ~~board's~~ initial rules pursuant to 82-4-321 relating to exploration and mining. This part is not applicable to the reprocessing of tailings or waste rock that occurred prior to the date of promulgation of the ~~board's~~ initial rules regarding those activities. If, after the date of promulgation of initial rules applicable to mills not located at a mine site, work is performed at a mill that does not use cyanide ore-processing reagent and that was constructed and operated before promulgation of those rules, this part applies only to the areas initially disturbed after promulgation of

those rules."

Section 97. Section 82-4-309, MCA, is amended to read:

"82-4-309. Exemption -- operations on federal lands. This part ~~shall not be applicable~~ does not apply to operations on certain federal lands as specified by the ~~board~~ department, provided it is first determined by the ~~board~~ department that federal law or regulations issued by the federal agency administering such land impose controls for reclamation of said lands substantially equal to or greater than those imposed by this part."

Section 98. Section 82-4-321, MCA, is amended to read:

"82-4-321. Administration. The department is charged with the responsibility of administering this part. ~~In order to implement its terms and provisions, the board shall from time to time promulgate such and adopting~~ rules as the ~~board~~ department shall deem necessary. The department shall employ experienced, qualified persons in the field of mined-land reclamation who, for the purpose of this part, are referred to as supervisors."

Section 99. Section 82-4-332, MCA, is amended to read:

"82-4-332. Exploration license. (1) An exploration license must be issued to any applicant who:

- (a) pays a fee of \$100 to the department;
- (b) agrees to reclaim any surface area damaged by the applicant during exploration operations, as may be reasonably required by the department;
- (c) is not in default of any other reclamation obligation under this law.

(2) An application for an exploration license must be made in writing, notarized, and submitted to the department in duplicate upon forms prepared and furnished by it. The application must include an exploration map or sketch in sufficient detail to locate the area to be explored and to determine whether significant environmental problems would be encountered. The ~~board~~ department shall by rule determine the precise nature of the exploration map or sketch. The applicant shall state what type of prospecting and excavation techniques will be employed in disturbing the land.

(3) Prior to the issuance of an exploration license, the applicant shall file with the department a reclamation and revegetation bond in a form and amount as determined by the department in accordance with

82-4-338.

(4) In the event that the holder of an exploration license desires to mine the area covered by the exploration license and has fulfilled all of the requirements for an operating permit, the department shall allow the postponement of the reclamation of the acreage explored if that acreage is incorporated into the complete reclamation plan submitted with the application for an operating permit. Any land actually affected by exploration or excavation under an exploration license and not covered by the operating reclamation plan must be reclaimed within 2 years after the completion of exploration or abandonment of the site in a manner acceptable to the department."

Section 100. Section 82-4-335, MCA, is amended to read:

"82-4-335. Operating permit -- limitation -- fees. (1) A person may not engage in mining, ore processing, or reprocessing of tailings or waste material, construct or operate a hard-rock mill, use cyanide ore-processing reagents or other metal leaching solvents or reagents, or disturb land in anticipation of those activities in the state without first obtaining a final operating permit from the department. Except as provided in subsection (2), a separate final operating permit is required for each complex.

(2) (a) A person who engages in the mining of rock products or a landowner who allows another person to engage in the mining of rock products from the landowner's land may obtain an operating permit for multiple sites if each of the multiple sites does not:

(i) operate within 100 feet of surface water or in ground water or impact any wetland, surface water, or ground water;

(ii) have any water impounding structures other than for storm water control;

(iii) have the potential to produce acid, toxic, or otherwise pollutive solutions;

(iv) adversely impact a member of or the critical habitat of a member of a wildlife species that is listed as threatened or endangered under the Endangered Species Act of 1973; or

(v) impact significant historic or archaeological features.

(b) A landowner who is a permittee and who allows another person to mine on the landowner's land remains responsible for compliance with this part, the rules adopted pursuant to this part, and the permit for all mining activities conducted on sites permitted pursuant to this subsection (2) with the landowner's permission.

The performance bond required under this part is and must be conditioned upon compliance with this part, the rules adopted pursuant to this part, and the permit of the landowner and any person who mines with the landowner's consent.

(3) A small miner who intends to use a cyanide ore-processing reagent or other metal leaching solvents or reagents shall obtain an operating permit for that part of the small miner's operation where the cyanide ore-processing reagent or other metal leaching solvents or reagents will be used or disposed of.

(4) (a) Prior to receiving an operating permit from the department, a person shall pay the basic permit fee of \$500. The department may require a person who is applying for a permit pursuant to subsection (1) to pay an additional fee not to exceed the actual amount of contractor and employee expenses beyond the normal operating expenses of the department whenever those expenses are reasonably necessary to provide for timely and adequate review of the application, including any environmental review conducted under Title 75, chapter 1, parts 1 and 2. The ~~board~~department may further define these expenses by rule. Whenever the department determines that an additional fee is necessary and the additional fee will exceed \$5,000, the department shall notify the applicant that a fee must be paid and submit to the applicant an itemized estimate of the proposed expenses. The department shall provide the applicant an opportunity to review the department's estimated expenses. The applicant may indicate which proposed expenses the applicant considers duplicative or excessive, if any.

(b) (i) Subject to subsection (4)(b)(ii), a contractor shall, at the request of the applicant, directly submit invoices of contractor expenses to the applicant.

(ii) A contractor's work is assigned, reviewed, accepted, or rejected by the department pursuant to this section.

(5) The person shall submit an application on a form provided by the department, which must contain the following information and any other pertinent data required by rule:

(a) the name and address of the operator, the engineer of record if applicable, and, if a corporation or other business entity, the name and address of its officers, directors, owners of 10% or more of any class of voting stock, partners, and the like and its resident agent for service of process, if required by law;

(b) the minerals expected to be mined;

(c) a proposed reclamation plan;

- (d) the expected starting date of operations;
- (e) a map showing the specific area to be mined and the boundaries of the land that will be disturbed, the topographic detail, the location and names of all streams, roads, railroads, and utility lines on or immediately adjacent to the area, and the location of proposed access roads to be built;
- (f) the names and addresses of the owners of record and any purchasers under contracts for deed of the surface of the land within the permit area and the owners of record and any purchasers under contracts for deed of all surface area within one-half mile of any part of the permit area, provided that the department is not required to verify this information;
- (g) the names and addresses of the present owners of record and any purchasers under contracts for deed of all minerals in the land within the permit area, provided that the department is not required to verify this information;
- (h) the source of the applicant's legal right to mine the mineral on the land affected by the permit, provided that the department is not required to verify this information;
- (i) the types of access roads to be built and manner of reclamation of road sites on abandonment;
- (j) a plan that will provide, within limits of normal operating procedures of the industry, for completion of the operation;
- (k) ground water and surface water hydrologic data gathered from a sufficient number of sources and length of time to characterize the hydrologic regime;
- (l) a plan detailing the design, operation, and monitoring of impounding structures, including but not limited to tailings impoundments and water reservoirs, sufficient to ensure that the structures are safe and stable. For a tailings storage facility, this requirement is met by submission of a design document pursuant to 82-4-376, a panel report pursuant to 82-4-377, and a tailings operation, maintenance, and surveillance manual pursuant to 82-4-379 prior to issuance of a draft permit.
- (m) a plan identifying methods to be used to monitor for the accidental discharge of objectionable materials and remedial action plans to be used to control and mitigate discharges to surface or ground water;
- (n) an evaluation of the expected life of any tailings impoundment or waste area and the potential for expansion of the tailings impoundment or waste site. For a tailings storage facility, this requirement is met by submission of a design document pursuant to 82-4-376, a panel report pursuant to 82-4-377, and a tailings

operation, maintenance, and surveillance manual pursuant to 82-4-379 prior to issuance of a draft permit.

(o) an assessment of the potential for the postmining use of mine-related facilities for other industrial purposes, including evidence of consultation with the county commission of the county or counties where the mine or mine-related facilities will be located.

(6) Except as provided in subsection (8), the permit provided for in subsection (1) for a large-scale mineral development, as defined in 90-6-302, must be conditioned to provide that activities under the permit may not commence until the impact plan is approved under 90-6-307 and until the permittee has provided a written guarantee to the department and to the hard-rock mining impact board of compliance within the time schedule with the commitment made in the approved impact plan, as provided in 90-6-307. If the permittee does not comply with that commitment within the time scheduled, the department, upon receipt of written notice from the hard-rock mining impact board, shall suspend the permit until it receives written notice from the hard-rock mining impact board that the permittee is in compliance.

(7) When the department determines that a permittee has become or will become a large-scale mineral developer pursuant to 82-4-339 and 90-6-302 and provides notice as required under 82-4-339, within 6 months of receiving the notice, the permittee shall provide the department with proof that the permittee has obtained a waiver of the impact plan requirement from the hard-rock mining impact board or that the permittee has filed an impact plan with the hard-rock mining impact board and the appropriate county or counties. If the permittee does not file the required proof or if the hard-rock mining impact board certifies to the department that the permittee has failed to comply with the hard-rock mining impact review and implementation requirements in Title 90, chapter 6, parts 3 and 4, the department shall suspend the permit until the permittee files the required proof or until the hard-rock mining impact board certifies that the permittee has complied with the hard-rock mining impact review and implementation requirements.

(8) Compliance with 90-6-307 is not required for exploration and bulk sampling for metallurgical testing when the aggregate samples are less than 10,000 tons.

(9) A person may not be issued an operating permit if:

(a) that person's failure, or the failure of any firm or business association of which that person was a principal or controlling member, to comply with the provisions of this part, the rules adopted under this part, or a permit or license issued under this part has resulted in either the receipt of bond proceeds by the department or

the completion of reclamation by the person's surety or by the department, unless that person meets the conditions described in 82-4-360;

(b) that person has not paid a penalty for which the department has obtained a judgment pursuant to 82-4-361;

(c) that person has failed to post a reclamation bond required by 82-4-305; or

(d) that person has failed to comply with an abatement order issued pursuant to 82-4-362, unless the department has completed the abatement and the person has reimbursed the department for the cost of abatement.

(10) A person may not be issued a permit under this part unless, at the time of submission of a bond, the person provides the current information required in subsection (5)(a) and:

(a) (i) certifies that the person is not currently in violation in this state of any law, rule, or regulation of this state or of the United States pertaining to air quality, water quality, or mined land reclamation; or

(ii) presents a certification by the administering agency that the violation is in the process of being corrected to the agency's satisfaction or is the subject of a bona fide administrative or judicial appeal; and

(b) if the person is a partnership, corporation, or other business association, provides the certification required by subsection (10)(a)(i) or (10)(a)(ii), as applicable, for any partners, officers, directors, owners of 10% or more of any class of voting stock, and business association members."

Section 101. Section 82-4-338, MCA, is amended to read:

"82-4-338. Performance bond. (1) (a) An applicant for an exploration license or operating permit shall file with the department a bond payable to the state of Montana with surety satisfactory to the department in the sum to be determined by the department of not less than \$200 for each acre or fraction of an acre of the disturbed land, conditioned upon the faithful performance of the requirements of this part, the rules of the ~~board~~ department, and the permit. In lieu of a bond, the applicant may file with the department a cash deposit, an assignment of a certificate of deposit, an irrevocable letter of credit, or other surety acceptable to the department. The bond may not be less than the estimated cost to the state to ensure compliance with Title 75, chapters 2 and 5, this part, the rules, and the permit, including the potential cost of department management, operation, and maintenance of the site upon temporary or permanent operator insolvency or abandonment,

[during a suspension authorized pursuant to 82-4-341(8)(b)(ii) or] until full bond liquidation can be effected.

(b) A public or governmental agency may not be required to post a bond under the provisions of this part.

(c) A blanket performance bond covering two or more operations may be accepted by the department. A blanket bond must adequately secure the estimated total number of acres of disturbed land.

(d) (i) For an exploration license or operating permit authorizing activities on federal land within the state, the department may accept a bond payable to the state of Montana and the federal agency administering the land. The bond must provide at least the same amount of financial guarantee as required by this part.

(ii) The bond must provide that the department may forfeit the bond without the concurrence of the federal land management agency. The bond may provide that the federal land management agency may forfeit the bond without the concurrence of the department. Upon forfeiture by either agency, the bond must be payable to the department and may also be payable to the federal land management agency. If the bond is payable to the department and the federal land management agency, the department, before accepting the bond, shall enter into an agreement or memorandum of understanding with the federal land management agency providing for administration of the bond funds in a manner that will allow the department to provide for compliance with the requirements of this part, the rules adopted under this part, and the permit.

(iii) The department may not enter into an agreement or memorandum of understanding with a federal land management agency that would require the department to impose requirements on an operator that are more stringent than state law and rules.

(2) (a) The department may calculate one or more reclamation plan components within its jurisdiction with the assistance of one or more third-party contractors selected jointly by the department and the applicant and compensated by the applicant when, based on relevant past experience, the department determines that additional expertise is necessary to calculate the bond amount for reclamation plan components. The department may contract for assistance pursuant to this subsection in determining bond amounts for the initial bond and for any subsequent bond review and adjustment. The mine owner is responsible for the first \$5,000 in contractor services provided under this subsection. The mine owner and the department are each responsible for 50% of any amount over \$5,000.

(b) To select a third-party contractor as authorized in subsection (2)(a), the department shall prepare

a list of no fewer than four contractors acceptable to the department and shall provide the applicant with a copy of the list. The applicant shall provide the department with a list of at least 50% of the contractors from the department's list. The department shall select its contractor from the list provided by the applicant.

(3) (a) The department shall conduct an overview of the amount of each bond annually and shall conduct a comprehensive bond review at least every 5 years. The department may conduct additional comprehensive bond reviews if, after modification of a reclamation or operation plan, an annual overview, or an inspection of the permit area, the department determines that an increase of the bond level may be necessary. The department shall consult with the licensee or permittee if a review indicates that the bond level should be adjusted. When determined by the department that the set bonding level of a permit or license does not represent the present costs of compliance with this part, the rules, and the permit, the department shall modify the bonding requirements of that permit or license. The licensee or permittee must have 60 days to negotiate the preliminary bond determination with the department, at the end of which time period the department shall issue the proposed bond determination. The department shall give the licensee or permittee a copy of the bond calculations that form the basis for the proposed bond determination and, for operating permits, publish notice of the proposed bond determination in a newspaper of general circulation in the county in which the operation is located. The department shall issue a final bond determination in 30 days. Unless the licensee or permittee requests a hearing under subsection (3)(b), the licensee or permittee shall post bond with the department in the amount represented by the final bond determination no later than 30 days after issuance of the final bond determination. If the licensee or permittee demonstrates that, through the exercise of reasonable diligence, the licensee or permittee will not be able to post the bond within 30 days, the department shall grant a 30-day extension of the deadline.

(b) The permittee or any person with an interest that may be adversely affected may obtain a contested case hearing before the ~~board~~ board under the provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, on the final bond determination by filing with the department, within 30 days of the issuance of the final bond determination, a written request for hearing stating the reason for the request. The request for hearing must specify the amount of bond increase, if any, that the licensee or permittee considers appropriate and state the reasons that the licensee or permittee considers the department's final bond determination to be excessive. As a condition precedent to any right to request a hearing, the licensee or

permittee shall post bond with the department in the amount of the bond increase that the licensee or permittee has stated is appropriate in the request for hearing or the amount that is one-half of the increase contained in the department's final bond determination, whichever amount is greater. If the ~~board~~board determines that additional bond is necessary, the licensee or permittee shall post bond in the amount determined by the ~~board~~board within 30 days of receipt of the ~~board's~~ decision. If the licensee or permittee demonstrates that, through the exercise of reasonable diligence, the licensee or permittee will not be able to post the bond within 30 days, the department shall grant a reasonable extension of the deadline.

(c) If a licensee or permittee fails to post bond in accordance with subsection (3)(a) or (3)(b) in the required amounts by the required deadlines, the license or permit is suspended by operation of law and the licensee or permittee shall immediately cease mining and exploration operations until the required bond is posted with and approved by the department.

(4) A bond filed in accordance with the provisions of this part may not be released by the department until the provisions of this part, the rules adopted pursuant to this part, and the permit have been fulfilled.

(5) A bond filed for an operating permit obtained under 82-4-335 may not be released or decreased until the public has been provided an opportunity for a hearing and a hearing has been held if requested. The department shall provide reasonable statewide and local notice of the opportunity for a hearing, including but not limited to publishing the notice in newspapers of general daily circulation.

(6) Except as provided in subsection (7), all bonds required in accordance with the provisions of this section must be based upon reasonably foreseeable activities that the applicant may conduct in order to comply with conditions of an operating permit or license. Bonds may be required only for anticipated activities as described in subsection (1). Only those activities that themselves or in conjunction with other activities have a reasonable possibility of occurring may be bonded. Bond calculations, including calculations for the initial bond or for subsequent bond reviews and adjustments, may not include amounts for any occurrence or contingency that is not a reasonably foreseeable result of any activity conducted by the applicant.

(7) (a) If the department determines, based on unanticipated circumstances that are discovered following the issuance of a mining permit, that a substantial and imminent danger to public health, public safety, or the environment exists or that there is a reasonable probability that a violation of water quality standards will occur, the department may require an operator to submit an amended reclamation plan to address the danger

and to post a temporary bond to guarantee the performance of the amended portion of the reclamation plan.

The temporary bond may only be required if the anticipated costs associated with the plan amendment would increase the total bond amount for the current plan by more than 10%, as determined in subsection (7)(b).

(b) (i) In determining the need for the temporary bond and the amount of the temporary bond under subsection (7)(a), the department shall select a third-party contractor in consultation with the operator pursuant to subsection (7)(b)(ii) to provide:

(A) a technical engineering analysis and report on the substantial and imminent danger to public health, public safety, or the environment identified in subsection (7)(a); and

(B) the estimated costs of addressing the potential danger in order to establish the amount of the temporary bond.

(ii) The department shall provide the operator with a list of at least four qualified third-party contractors. The operator shall select two qualified third-party contractors from that list. The department shall select its contractor from the list provided by the operator. The operator shall reimburse the department for the reasonable costs of the third-party contractor.

(c) An approved interim amended reclamation plan and interim bond must remain in effect until the earlier of:

(i) the date that a revised reclamation plan is approved pursuant to 82-4-337 and a permanent bond for the revised reclamation plan is submitted and accepted pursuant to this section; or

(ii) 2 years following the date of submission of a complete application pursuant to 82-4-337 to modify the reclamation plan provision or remedy the conditions that created the need to amend the reclamation plan unless the department approves or denies the complete application within 2 years of submission. The applicant may agree to an extension of this deadline.

(d) Except as provided in subsection (8), the process provided for in this subsection (7) is not subject to the provisions of Title 75, chapter 1.

(8) (a) In determining whether to require amendment of a reclamation plan under subsection (7)(a), the department shall prepare or require the permittee to prepare a written analysis of changes in the reclamation plan that may eliminate or mitigate to an acceptable level the environmental condition. The analysis must include an assessment of the effectiveness of the changes and any potential negative environmental

impacts of the changes. The department shall prepare an environmental impact statement pursuant to Title 75, chapter 1, only if the department determines that the changes would not mitigate the condition to an acceptable level or may have potentially significant negative environmental impacts.

(b) If the department determines that preparation of an environmental impact statement is necessary, the permittee shall pay the department's costs pursuant to 75-1-205.

(9) At the applicant's discretion, bonding in addition to that required by this section may be posted. These unobligated bonds may, on the applicant's request, be applied to future bonds required by this section.

(10) (a) If the department determines that there exists at an area permitted or licensed under this part an imminent danger to public health, public safety, or the environment caused by a violation of this part, the rules adopted pursuant to this part, or the permit or license and if the permittee or licensee fails or refuses to expeditiously abate the danger, the department may immediately suspend the permit or license, enter the site, and abate the danger. The department may ~~thereafter~~ institute proceedings to revoke the license or permit, declare the permittee or licensee in default, and forfeit a portion of the bond, not to exceed \$150,000 or 10% of the bond, whichever is less, to be used to abate the danger. The department shall notify the surety of the forfeiture and the forfeiture amount by certified mail, and the surety shall pay the forfeiture amount to the department within 30 days of receipt of the notice. The department shall, as a condition of any termination of the suspension and revocation proceedings, require that the permittee or licensee reimburse the surety, with interest, for any amount paid to and expended by the department pursuant to this subsection (10) and for the actual cost of the surety's expenses in responding to the department's forfeiture demand.

(b) If the department is unable to permanently abate the imminent danger using the amount forfeited under subsection (10)(a), the department may forfeit additional amounts under the procedure provided in subsection (10)(a).

(c) The department shall return to the surety any money received from the surety pursuant to this subsection (10) and not used by the department to abate the imminent danger. The amount not returned to the surety must be credited to the surety and reduces the penal amount of the bond on a dollar-for-dollar basis.

(d) Any interest accrued on bond proceeds that is not required to abate the imminent danger determined in subsection (10)(a) must be returned to the surety, unless otherwise agreed to in writing by the surety.

(11) If a bond is terminated as a result of the action or inaction of a licensee or permittee or is canceled or otherwise terminated by the surety issuing the bond and the licensee or permittee fails to post a new bond for the entire amount of the terminated bond within 30 days following the notice of termination provided to the department, then the license or permit must be immediately suspended without further action by the department. (Bracketed language in subsection (1)(a) terminates June 30, 2026--sec. 6, Ch. 458, L. 2019.)"

Section 102. Section 82-4-339, MCA, is amended to read:

"82-4-339. Annual report of activities by permittee -- fee -- notice of large-scale mineral developer status. (1) Within 30 days after completion or abandonment of operations on an area under permit or within 30 days after each anniversary date of the permit, whichever is earlier, or at a later date that may be provided by ~~rules of the board~~ rule and each year after that date until reclamation is completed and approved, the permittee shall pay the annual fee of \$100 and shall file a report of activities completed during the preceding year on a form prescribed by the department. The report must:

- (a) identify the permittee and the permit number;
- (b) locate the operation by subdivision, section, township, and range and with relation to the nearest town or other well-known geographic feature;
- (c) estimate acreage to be newly disturbed by operation in the next 12-month period;
- (d) include the number of persons on the payroll for the previous permit year and for the next permit year at intervals that the department considers sufficient to enable a determination of the permittee's status under 90-6-302(4);

- (e) update the information required in 82-4-335(5)(a); and
- (f) update any maps previously submitted or specifically requested by the department. The maps must show:

- (i) the permit area;
- (ii) the unit of disturbed land;
- (iii) the area to be disturbed during the next 12-month period;
- (iv) if completed, the date of completion of operations;
- (v) if not completed, the additional area estimated to be further disturbed by the operation within the

following permit year; and

(vi) the date of beginning, amount, and current status of reclamation performed during the previous 12 months.

(2) Whenever the department determines that the permittee has become or will, during the next permit year, become a large-scale mineral developer, it shall immediately serve written notice of that fact on the permittee, the hard-rock mining impact board, and the county or counties in which the operation is located."

Section 103. Section 82-4-342, MCA, is amended to read:

"82-4-342. Amendment to operating permits. (1) During the term of an operating permit issued under this part, an operator may apply for a permit revision as described in subsections (5)(g) through (5)(j) or an amendment to the permit. The operator may not apply for an amendment to delete disturbed acreage except following reclamation, as required under 82-4-336, and bond release for the disturbance, as required under 82-4-338.

(2) (a) The ~~board~~department may by rule establish criteria for the classification of amendments as major or minor. The ~~board~~department shall adopt rules establishing requirements for the content of applications for revisions and major and minor amendments and the procedures for processing revisions and minor amendments.

(b) An amendment must be considered minor if:

- (i) it is for the purpose of retention of mine-related facilities that are valuable for postmining use;
- (ii) evidence is submitted showing that a local government has requested retention of the mine-related facilities for a postmining use; and
- (iii) the postmining use of the mine-related facilities meets the requirements provided for in 82-4-336.

(3) Applications for major amendments must be processed pursuant to 82-4-337.

(4) The department shall review an application for a revision or a minor amendment and provide a notice of decision on the adequacy of the application within 30 days. If the department does not respond within 30 days, then the permit is revised or amended in accordance with the application.

(5) The department is not required to prepare an environmental assessment or an environmental impact statement for the following categories of action and permit revisions:

- (a) actions that qualify for a categorical exclusion as defined by rule or justified by a programmatic review pursuant to Title 75, chapter 1;
- (b) administrative actions, such as routine, clerical, or similar functions of a department, including but not limited to administrative procurement, contracts for consulting services, and personnel actions;
- (c) repair or maintenance of the permittee's equipment or facilities;
- (d) investigation and enforcement actions, such as data collection, inspection of facilities, or enforcement of environmental standards;
- (e) ministerial actions, such as actions in which the agency does not exercise discretion, but acts upon a given state of facts in a prescribed manner;
- (f) approval of actions that are primarily social or economic in nature and that do not otherwise affect the human environment;
- (g) changes in a permit boundary that increase disturbed acres that are insignificant in impact relative to the entire operation, provided that the increase is less than 25 acres or 10% of the permitted area, whichever is less;
- (h) changes to an approved reclamation plan if the changes are consistent with this part and rules adopted pursuant to this part;
- (i) changes in an approved operating plan for an activity that was previously permitted if the changes will be insignificant relative to the entire operation and the changes are consistent with subsection (5)(g);
- (j) changes in a permit for the purpose of retention of mine-related facilities that are valuable for postmining use; and
- (k) modifications to a tailings storage facility that result in a minor expansion to the facility if:
 - (i) the proposed modification is certified by the seal of the engineer of record;
 - (ii) the capacity increase resulting from the expansion is no greater than 15% of the capacity of the existing tailings storage facility; and
 - (iii) the modification complies with 82-4-376(2)(l) and (2)(dd) and is exempt under subsection (5)(g), (5)(h), or (5)(i) of this section."

Section 104. Section 82-4-371, MCA, is amended to read:

"82-4-371. Reclamation of abandoned mine sites. (1) Agents, employees, or contractors of the department may enter upon property for the purpose of conducting studies or exploratory work to determine whether the property has been mined and not reclaimed and rehabilitated in accordance with the requirements of this part and to determine the feasibility of restoration or reclamation of the property or abatement, control, or prevention of the adverse effects of past mining practices. The department may bring an injunctive action to restrain interference with the exercise of the right to enter and inspect granted in this subsection.

(2) (a) The department may enter upon property pursuant to subsection (2)(b) if it makes a finding that:

- (i) land or water resources on the property have been adversely affected by past mining practices;
- (ii) the adverse effects are at a stage that, in the public interest, action to restore or reclaim the property or to abate, control, or prevent the adverse effects should be taken; and
- (iii) the owners of the land or water resources where entry must be made to restore or reclaim the property or to abate, control, or prevent the adverse effects of past mining practices are not known or readily available or the owners will not give permission for the department or its agents, employees, or contractors to enter upon the property to restore or reclaim the property or to abate, control, or prevent the adverse effects of past mining practices.

(b) If the department has made findings pursuant to subsection (2)(a), agents, employees, or contractors of the department may enter upon property adversely affected by past mining practices and other property necessary for access to the adversely affected property to do all things necessary or expedient to restore or reclaim the property or to abate, control, or prevent the adverse effects of past mining practices after:

- (i) giving notice by mail to the owner, if known, and a purchaser under contract for deed, if known; or
- (ii) if neither is known, posting notice upon the property and advertising in a newspaper of general circulation in the county in which the property lies.

(c) Entry upon property pursuant to this section is not an act of condemnation of property or of trespass but rather an exercise of the power granted by Article IX, sections 1 and 2, of the Montana constitution.

(3) The ~~board~~department may acquire the necessary property by gift or purchase. A gift or purchase

must be approved by the board of land commissioners. If the property cannot be acquired by gift or purchase at a reasonable cost, proceedings may be instituted in the manner provided in Title 70, chapter 30, against all nonaccepting landholders if:

- (a) acquisition of the property is necessary for successful reclamation;
 - (b) the acquired property after restoration or reclamation or after abatement, control, or prevention of the adverse effects of past mining practices will serve recreation and historic purposes or conservation and reclamation purposes or provide open space benefits; and
 - (c) (i) permanent facilities, such as treatment plants or relocated stream channels, will be constructed on the property for the restoration or reclamation of the property or for abatement, control, or prevention of the adverse effects of past mining practices; or
 - (ii) acquisition of refuse disposal sites and all refuse on the sites will serve the purposes of this part in that public ownership is desirable to meet emergency situations and prevent recurrences of the adverse effects of past mining practices.
- (4) The department may record in the office of the clerk and recorder in the county in which property that has been reclaimed pursuant to 82-4-424 or this section is located a notice that the property has been mined and reclaimed. The notice must include the date and a brief description of the reclamation."

Section 105. Section 82-4-406, MCA, is amended to read:

"82-4-406. Exemption -- opencut operations on federal and state lands. This part is not applicable to operations on certain federal and state lands as specified by the ~~board~~ department, provided it is first determined by the ~~board~~ department that laws, regulations, or rules administered or issued by the federal or state agency administering or having jurisdiction over the affected land impose controls for opencut operations on those lands equal to or greater than those imposed by this part."

Section 106. Section 82-4-422, MCA, is amended to read:

"82-4-422. Powers, duties, and functions. (1) The department has the powers, duties, and functions to:

- (a) issue permits when, on the basis of the information set forth in the application and an evaluation of

the proposed opencut operations, the department finds that the requirements of this part and rules adopted to implement this part will be observed;

- (b) amend permits in accordance with the provisions of 82-4-436;
- (c) reclaim any affected land with respect to which a bond has been forfeited;
- (d) make investigations or inspections that are considered necessary to ensure compliance with any provision of this part; and
- (e) enforce and administer the provisions of this part and issue orders necessary to implement the provisions of this part.

- (2) ~~The board~~department shall:
- (a) adopt rules that pertain to opencut operations in order to accomplish the purposes of this part;
 - (b) adopt rules:
 - (i) establishing uniform procedures for filing of necessary records;
 - (ii) providing procedures for the issuance of permits and filing of annual reports; and
 - (iii) providing other administrative requirements ~~that the board considers~~ necessary to implement this part; ~~and.~~

(3) The board shall conduct hearings and, for the purposes of conducting those hearings, administer oaths and affirmations, subpoena witnesses, compel attendance of witnesses, hear evidence, and require the production of any books, papers, correspondence, memoranda, agreements, documents, or other records relevant or material to the inquiry."

Section 107. Section 82-4-437, MCA, is amended to read:

"82-4-437. Annual report -- fees. (1) For each opencut operation, the operator shall file an annual report on a form furnished by the department. The report must contain the information and be submitted at times provided in rules of the ~~board~~ department.

(2) (a) Except as provided in subsection (2)(b), each opencut operation shall submit with the annual report a fee of 4.5 cents per cubic yard of materials for all operations mined during the period covered by the report.

(b) Opencut operations that mine, extract, or produce bentonite are not subject to the fee in

subsection (2)(a).

(3) The department:

(a) shall require the operator to pay the following fees:

(i) \$1,500 for each permit application submitted pursuant to 82-4-432(1); and

(ii) for each amendment application submitted pursuant to 82-4-432(11):

(A) \$750 if the date of the amendment application is 10 years or less from the date of the permit approval; or

(B) \$1,500 if the date of the amendment application is more than 10 years from the date of the permit approval; and

(b) shall adopt rules for applications or responses that are administrative. Fees, if any, for administrative actions identified under this subsection (3) may not exceed \$250.

(4) Pursuant to the provisions of 82-4-441, a person who mines materials without a permit in violation of this part shall submit a report and the fees required by subsections (2)(a) and (3)(a)(i) of this section."

Section 108. Section 82-4-445, MCA, is amended to read:

"82-4-445. Reclamation of abandoned mine sites. (1) Agents, employees, or contractors of the department may enter upon property for the purpose of conducting studies or exploratory work to determine whether the property has been mined and not reclaimed and rehabilitated in accordance with the requirements of this part and to determine the feasibility of restoration or reclamation of the property or abatement, control, or prevention of the adverse effects of past mining practices. The department may bring an injunctive action to restrain interference with the exercise of the right to enter and inspect granted in this subsection.

(2) (a) The department may enter upon property pursuant to subsection (2)(b) if it makes a finding that:

(i) land or water resources on the property have been adversely affected by past mining practices;

(ii) the adverse effects are at a stage that, in the public interest, action to restore or reclaim the property or to abate, control, or prevent the adverse effects should be taken; and

(iii) the owners of the land or water resources where entry must be made to restore or reclaim the property or to abate, control, or prevent the adverse effects of past mining practices are not known or readily

available or the owners will not give permission for the department or its agents, employees, or contractors to enter upon the property to restore or reclaim the property or to abate, control, or prevent the adverse effects of past mining practices.

(b) If the department has made findings pursuant to subsection (2)(a), agents, employees, or contractors of the department may enter upon property adversely affected by past mining practices and other property necessary for access to the adversely affected property to do all things necessary or expedient to restore or reclaim the property or to abate, control, or prevent the adverse effects of past mining practices after:

- (i) giving notice by mail to the owner, if known, and a purchaser under contract for deed, if known; or
- (ii) if neither is known, posting notice upon the property and advertising in a newspaper of general circulation in the county in which the property lies.

(c) Entry upon property pursuant to this section is not an act of condemnation of property or of trespass but rather an exercise of the power granted by Article IX, sections 1 and 2, of the Montana constitution.

(3) The ~~board~~department may acquire the necessary property by gift or purchase, or if the property cannot be acquired by gift or purchase at a reasonable cost, proceedings may be instituted in the manner provided in Title 70, chapter 30, against all nonaccepting landholders if:

- (a) acquisition of the property is necessary for successful reclamation;
- (b) the acquired property after restoration or reclamation or after abatement, control, or prevention of the adverse effects of past mining practices will serve recreation and historic purposes or conservation and reclamation purposes or provide open space benefits; and
- (c) (i) permanent facilities, such as treatment plants or relocated stream channels, will be constructed on the property for the restoration or reclamation of the property or for abatement, control, or prevention of the adverse effects of past mining practices; or
- (ii) acquisition of refuse disposal sites and all refuse on the sites will serve the purposes of this part in that public ownership is desirable to meet emergency situations and prevent recurrences of the adverse effects of past mining practices.

(4) The department may record in the office of the clerk and recorder in the county in which property that has been reclaimed pursuant to 82-4-424 or this section is located a notice that the property has been

mined and reclaimed. The notice must include the date and a brief description of the reclamation."

Section 109. Section 82-4-1001, MCA, is amended to read:

"82-4-1001. Penalty factors. (1) In determining the amount of an administrative or civil penalty assessed under the statutes listed in subsection (4), the department of environmental quality or the district court, as appropriate, shall take into account the following factors:

- (a) the nature, extent, and gravity of the violation;
- (b) the circumstances of the violation;
- (c) the violator's prior history of any violation, which:
 - (i) must be a violation of a requirement under the authority of the same chapter and part as the violation for which the penalty is being assessed;
 - (ii) must be documented in an administrative order or a judicial order or judgment issued within 3 years prior to the date of the occurrence of the violation for which the penalty is being assessed; and
 - (iii) may not, at the time that the penalty is being assessed, be undergoing or subject to administrative appeal or judicial review;
- (d) the economic benefit or savings resulting from the violator's action;
- (e) the violator's good faith and cooperation;
- (f) the amounts voluntarily expended by the violator, beyond what is required by law or order, to address or mitigate the violation or impacts of the violation; and
- (g) other matters that justice may require.

(2) Except for penalties assessed under 82-4-254, after the amount of a penalty is determined under (1), the department of environmental quality or the district court, as appropriate, may consider the violator's financial ability to pay the penalty and may institute a payment schedule or suspend all or a portion of the penalty.

(3) Except for penalties assessed under 82-4-254, the department of environmental quality may accept a supplemental environmental project as mitigation for a portion of the penalty. For purposes of this section, a "supplemental environmental project" is an environmentally beneficial project that a violator agrees to undertake in settlement of an enforcement action but which the violator is not otherwise legally required to

perform.

(4) This section applies to penalties assessed by the department of environmental quality or the district court under 82-4-141, 82-4-254, 82-4-361, and 82-4-441.

(5) The ~~board of environmental review and the~~ department of environmental quality may, ~~for the statutes listed in subsection (4) for which each has rulemaking authority,~~ adopt rules to implement this section."

Section 110. Section 82-15-102, MCA, is amended to read:

"82-15-102. Enforcement of part -- rules. (1) Except as provided in subsection (2), this part must be enforced by the department. It may adopt necessary and reasonable rules for the implementation of the provisions and intent of this part, and those rules have the effect of law.

(2) Section 82-15-110(8) must be enforced by the department of environmental quality.

(3) The ~~board of environmental review~~ department of environmental quality shall adopt rules for the regulation of methyl tertiary butyl ether in accordance with this part. The rules must establish:

(a) a trace level or trace levels of methyl tertiary butyl ether that may be contained in gasoline that is imported into the state, stored, distributed, sold, offered or exposed for sale, or dispensed in the state of Montana. The ~~board~~ department of environmental quality shall establish trace levels in a manner that prevents the intentional addition of methyl tertiary butyl ether to gasoline but that allows for a residual amount of methyl tertiary butyl ether to remain in tanks following implementation of 82-15-110(8).

(b) reasonable sampling and reporting requirements; and

(c) requirements that the ~~board~~ department of environmental quality determines are reasonable and necessary for implementation of the portions of this part that apply to methyl tertiary butyl ether."

Section 111. Repealer. The following sections of the Montana Code Annotated are repealed:

75-6-103. Duties of board.

75-10-106. Duties of board.

82-4-111. Rules of board -- hearings.

82-4-204. Board rules.

Section 112. Transition. Rulemaking authority and existing rules under the jurisdiction of the board of environmental review are transferred to the department of environmental quality on [the effective date of this act].

Section 113. Effective date. [This act] is effective July 1, 2021.

- END -

I hereby certify that the within bill,
SB 233, originated in the Senate.

Secretary of the Senate

President of the Senate

Signed this _____ day
of _____, 2021.

Speaker of the House

Signed this _____ day
of _____, 2021.

SENATE BILL NO. 233
INTRODUCED BY D. ANKNEY

AN ACT GENERALLY REVISING LAWS RELATED TO THE BOARD OF ENVIRONMENTAL REVIEW; REASSIGNING DUTIES AND POWERS OF THE BOARD OF ENVIRONMENTAL REVIEW; TRANSFERRING RULEMAKING AUTHORITY; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTIONS 7-13-4502, 7-13-4513, 7-13-4517, 15-24-3001, 37-42-102, 37-42-321, 50-2-116, 50-79-401, 50-79-403, 75-1-220, 75-1-1001, 75-2-103, 75-2-104, 75-2-105, 75-2-111, 75-2-112, 75-2-201, 75-2-202, 75-2-203, 75-2-204, 75-2-206, 75-2-207, 75-2-211, 75-2-212, 75-2-213, 75-2-215, 75-2-217, 75-2-218, 75-2-219, 75-2-220, 75-2-221, 75-2-231, 75-2-234, 75-2-301, 75-2-302, 75-2-401, 75-2-402, 75-2-411, 75-2-421, 75-2-422, 75-2-425, 75-2-426, 75-2-428, 75-2-515, 75-5-103, 75-5-105, 75-5-106, 75-5-201, 75-5-202, 75-5-203, 75-5-222, 75-5-301, 75-5-302, 75-5-303, 75-5-304, 75-5-305, 75-5-307, 75-5-308, 75-5-310, 75-5-311, 75-5-312, 75-5-313, 75-5-314, 75-5-315, 75-5-316, 75-5-318, 75-5-401, 75-5-402, 75-5-403, 75-5-404, 75-5-502, 75-5-514, 75-5-515, 75-5-516, 75-5-611, 75-5-614, 75-5-621, 75-5-641, 75-5-702, 75-5-802, 75-6-102, 75-6-104, 75-6-105, 75-6-106, 75-6-107, 75-6-108, 75-6-109, 75-6-112, 75-6-113, 75-6-116, 75-6-121, 75-6-131, 75-10-103, 75-10-104, 75-10-112, 75-10-115, 75-10-203, 75-10-206, 75-10-221, 75-10-223, 75-10-224, 75-10-227, 75-10-403, 75-10-406, 75-10-408, 75-10-409, 75-10-413, 75-10-414, 75-10-417, 75-10-418, 75-10-424, 75-10-501, 75-10-515, 75-10-540, 75-10-714, 75-10-727, 75-10-732, 75-10-736, 75-10-1201, 75-10-1221, 75-10-1222, 75-11-203, 75-11-211, 75-11-218, 75-11-219, 75-11-223, 75-11-224, 75-11-503, 75-11-505, 75-11-508, 75-11-509, 75-11-512, 75-11-513, 75-11-516, 75-11-525, 75-20-104, 75-20-105, 75-20-201, 75-20-207, 75-20-208, 75-20-211, 75-20-215, 75-20-216, 75-20-219, 75-20-223, 75-20-301, 75-20-303, 75-20-304, 75-20-401, 75-20-406, 75-20-407, 75-20-410, 75-20-411, 75-20-1001, 75-20-1202, 75-20-1203, 75-20-1205, 75-26-301, 75-26-304, 76-3-622, 76-4-102, 76-4-108, 76-4-126, 76-4-1001, 80-15-102, 80-15-105, 80-15-110, 80-15-201, 82-4-102, 82-4-103, 82-4-112, 82-4-123, 82-4-129, 82-4-130, 82-4-203, 82-4-205, 82-4-206, 82-4-207, 82-4-223, 82-4-226, 82-4-227, 82-4-231, 82-4-232, 82-4-234, 82-4-235, 82-4-239, 82-4-251, 82-4-254, 82-4-303, 82-4-304, 82-4-305, 82-4-309, 82-4-321, 82-4-332, 82-4-335, 82-4-338, 82-4-339, 82-4-342, 82-4-353, 82-4-361, 82-4-362, 82-4-371, 82-4-403, 82-4-406, 82-4-422, 82-4-427, 82-4-437, 82-4-441, 82-4-442, 82-4-445, 82-4-1001, AND 82-15-102, AND 82-15-120, MCA; AND REPEALING SECTIONS 2-15-3502, 75-2-111, 75-6-103, 75-10-106, 82-4-111, AND 82-4-204, MCA; AND PROVIDING AN EFFECTIVE DATE.

MINUTES

MONTANA SENATE 67th LEGISLATURE - REGULAR SESSION COMMITTEE ON NATURAL RESOURCES

Call to Order: Chair Jeffrey W. Welborn, on February 22, 2021 at 3:00 PM, in Room 303 Capitol

ROLL CALL

Members Present in the Committee Room:

Sen. Jeffrey W. Welborn, Chair (R)
Sen. Jason D. Small, Vice Chair (R)
Sen. Duane Ankney (R)
Sen. Bob Brown (R)
Sen. Jill Cohenour (D)
Sen. Bruce Gillespie (R)
Sen. Brian Hoven (R)
Sen. Tom Jacobson (D)
Sen. Mike Lang (R)
Sen. Ryan Lynch (D)

Members Present by Zoom Video Conference:

Sen. Pat Flowers, Vice Chair (D)
Sen. JP Pomnichowski (D)

Members Excused: None

Members Absent: None

Staff Present: Lauren de Paepe, Committee Secretary
Jason Mohr, Legislative Branch
Coleen Street, Remote Meeting Coordinator

Audio Committees: These minutes are in outline form only. They provide a list of participants and a record of official action taken by the committee. The link to the audio recording of the meeting is available on the Legislative Branch website.

Committee Business Summary:

Hearing & Date Posted: SB 233, 2/19/2021; SB 324, 2/22/2021; SB 304, 2/19/2021 -
Withdrawn at Sponsor's Request
Executive Action: SJ 6 - Do Pass; SB 258 - Do Pass

HEARING ON SB 324

Opening Statement by Sponsor:

15:01:57 Sen. Mike Cuffe (R), SD 1, opened the hearing on SB324, Repeal administrative rules related to selenium.

EXHIBIT(nas37a01)

15:07:37 Rep. Steve Gunderson, HD 1

EXHIBIT(nas37a02)

15:11:48 Sen. Cuffe

Proponents' Testimony:

15:16:57 Josh Letcher, Lincoln County commissioner

15:19:57 Cam Foote, pastor, Troy Community Baptist Church

Opponents' Testimony:

15:22:32 Chris Dorrington, director, Department of Environmental Quality (DEQ)

15:29:38 Clayton Elliott, Montana Trout Unlimited (MT TU)

Informational Testimony:

15:32:52 Myla Kelly, Water Quality Standards and Modeling section manager, DEQ

Questions from Committee Members and Responses:

15:33:25 Sen. Hoven

15:37:26 Mr. Dorrington, DEQ

15:38:06 Sen. Cohenour

15:42:35 Mr. Dorrington

15:42:49 Ms. Kelly, DEQ

15:43:47 Sen. Cohenour

15:44:12 Mr. Elliott, MT TU

15:44:51 Sen. Cohenour

15:46:07 Ms. Kelly

15:46:23 Sen. Gillespie

15:47:51 Mr. Dorrington

15:48:27 Sen. Gillespie

15:50:09 Mr. Elliott

15:51:14 Sen. Flowers

15:52:12 Mr. Dorrington

15:52:20 Ms. Kelly

15:53:34 Sen. Flowers

15:54:45 Mr. Dorrington

15:55:51 Sen. Flowers

15:59:00 Sen. Cuffe

16:05:28 Chair Welborn

16:05:50 Sen. Brown

16:06:57 Mr. Dorrington

16:07:08 Ms. Kelly

16:07:31 Sen. Brown

16:08:23 Mr. Dorrington
 16:08:33 Ms. Kelly
 16:08:49 Sen. Lang
 16:12:27 Ms. Kelly
 16:13:06 Sen. Lang
 16:13:38 Mr. Dorrington
 16:15:16 Sen. Pomnichowski
 16:17:40 Mr. Dorrington
 16:19:18 Sen. Cohenour
 16:20:28 Sen. Cuffe

 16:22:07 Sen. Lynch left the meeting.

 16:27:19 Sen. Cohenour
 16:27:55 Sen. Brown
 16:28:19 Mr. Dorrington
 16:28:43 Sen. Hoven
 16:29:12 Sen. Cuffe
 16:30:39 Chair Welborn
 16:31:07 Jerry Bennett, Lincoln County commissioner

Closing by Sponsor:

16:32:26 Sen. Cuffe

 16:36:49 Recess

 16:44:58 Reconvene

HEARING ON SB 233

Opening Statement by Sponsor:

16:45:06 Sen. Duane Ankney (R), SD 20, opened the hearing on SB233, Generally revise the board of environmental review.

Proponents' Testimony:

16:48:39 Peggy Trenk, Treasure State Resources Association
 16:51:51 Alan Olson, executive director, Montana Petroleum Association
 16:54:00 Shelby DeMars, Montana Association of Oil, Gas, & Coal Counties

Opponents' Testimony: None

Informational Testimony:

16:55:03 George Mathieus, Department of Environmental Quality

Questions from Committee Members and Responses: None

Closing by Sponsor:

16:55:44 Sen. Ankney

 16:57:33 Sen. Gillespie left the meeting.

EXECUTIVE ACTION ON SJ 6

16:59:02 **Motion:** Sen. Flowers moved that **SJ 6 DO PASS.**

Discussion:

16:59:26 Sen. Flowers

17:00:18 **Vote:** Motion carried 10-0 by voice vote. Sen. Gillespie and Sen. Lynch were excused.

EXECUTIVE ACTION ON SB 258

17:00:37 **Motion:** Sen. Small moved that **SB 258 DO PASS.**

Discussion:

17:00:57 Sen. Ankney

17:01:26 Sen. Brown

17:02:07 Sen. Gillespie entered the meeting.

17:02:18 **Vote:** Motion carried 11-0 by voice vote. Sen. Lynch was excused.

ADJOURNMENT

Adjournment: 5:02 PM

Lauren de Paepe, Secretary

Id

Additional Documents:

EXHIBIT([nas37aad.pdf](#))



2021 Session

Additional Documents

May include the following:

- **Business Report**
- **Roll Call -Attendance**
- **Standing Committee Reports**
- **Tabled Bills**
- **Fiscal Reports**
- **Roll Call Votes**
- **Informational Item's**
- **Witness Statements**
- **Visitor Register**
- **Any other type of documents such as:**
 - Petitions, Pamphlets, Leaflets, Brochures, Emails, all documents given to Committee Secretary 24 hours after the meeting adjourned.**

The original exhibit/items are on file at the Montana Historical Society and may be viewed there.

BUSINESS REPORT

**MONTANA SENATE
67th LEGISLATURE - REGULAR SESSION**

SENATE NATURAL RESOURCES COMMITTEE

Date: Monday, February 22, 2021

Place: Capitol

Time: 3:00 PM

Room: 303

BILLS and RESOLUTIONS HEARD:

SB 233 - Generally revise the board of environmental review - Sen. Duane Ankney (R)

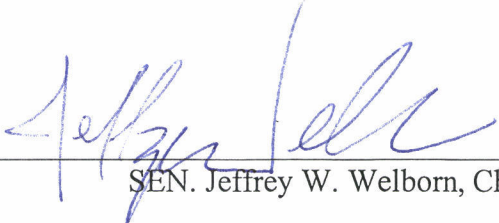
SB 324 - Repeal administrative rules related to selenium - Sen. Mike Cuffe (R)

EXECUTIVE ACTION TAKEN:

SJ 6 - Do Pass

SB 258 - Do Pass

Comments:



SEN. Jeffrey W. Welborn, Chair

MONTANA STATE SENATE
Roll Call
NATURAL RESOURCES COMMITTEE

DATE: 2.22.21

<u>NAME</u>	<u>PRESENT</u>	<u>ABSENT/ EXCUSED</u>
VICE CHAIR SMALL	✓	
VICE CHAIR FLOWERS	✓	
SEN. ANKNEY	✓	
SEN. BROWN	✓	
SEN. COHENOUR	✓	
SEN. GILLESPIE	✓	
SEN. HOVEN	✓	
SEN. JACOBSON	✓	
SEN. LANG	✓	
SEN. LYNCH	✓	
SEN. POMNICHOWSKI	✓	
CHAIRMAN WELBORN	✓	
12 Committee Members		



SENATE STANDING COMMITTEE REPORT

February 22, 2021

Page 1 of 1

Mr. President:

We, your committee on **Natural Resources** report that **Senate Joint Resolution 6** (first reading copy -- white) **do pass**.

Signed: _____

Senator Jeffrey W. Welborn, Chair

- END -

Committee Vote:

Yes 10, No 0

Fiscal Note Required ☐

SJ0006001SC.slk



SENATE STANDING COMMITTEE REPORT

February 22, 2021

Page 1 of 1

Mr. President:

We, your committee on **Natural Resources** report that **Senate Bill 258** (first reading copy -- white) **do pass**.

Signed: _____

Senator Jeffrey W. Welborn, Chair

- END -

Committee Vote:

Yes 11, No 0

Fiscal Note Required X

SB0258001SC.slk

SENATE NATURAL RESOURCES COMMITTEE

Sponsor: **Sen. Mike Cuffe (R)**

[illegible]

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

SENATE NATURAL RESOURCES COMMITTEE

Sponsor: **Sen. Duane Ankney (R)**

[illegible]

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

Public Comment Requests

Senate Natural Resources

Meeting Date: 02/22/2021 Meeting Time: 3:00 pm

Bill	Name	Position	Location	Email	Affiliation
SB-324	Myla Kelly	Informational Witness	Helena		Dept. of Environmental Quality

MINUTES

MONTANA SENATE 67th LEGISLATURE - REGULAR SESSION COMMITTEE ON NATURAL RESOURCES

Call to Order: Chair Jeffrey W. Welborn, on February 24, 2021 at 2:45 PM, in Room 303 Capitol

ROLL CALL

Members Present in the Committee Room:

Sen. Jeffrey W. Welborn, Chair (R)
Sen. Jason D. Small, Vice Chair (R)
Sen. Duane Ankney (R)
Sen. Bob Brown (R)
Sen. Jill Cohenour (D)
Sen. Bruce Gillespie (R)
Sen. Brian Hoven (R)
Sen. Tom Jacobson (D)
Sen. Mike Lang (R)
Sen. Ryan Lynch (D)

Members Present by Zoom Video Conference:

Sen. Pat Flowers, Vice Chair (D)
Sen. JP Pomnichowski (D)

Members Excused: None

Members Absent: None

Staff Present: Lauren de Paepe, Committee Secretary
Jason Mohr, Legislative Branch
Jacquie Simmons, Remote Meeting Coordinator

Audio Committees: These minutes are in outline form only. They provide a list of participants and a record of official action taken by the committee. The link to the audio recording of the meeting is available on the Legislative Branch website.

Committee Business Summary:

Hearing & Date Posted: SB 284, 2/22/2021; SB 302, 2/19/2021; SB 348, 2/23/2021;
SB 352, 2/23/2021; SB 358, 2/23/2021
Executive Action: SB 304 - Be Tabled; SB 371 - Be Tabled; SB 233 - Do Pass as
Amended; SB 302 - Do Pass; SB 348 - Do Pass; SB 284 - Do
Pass; SB 258 - Be Tabled

14:48:06 Sen. Lang entered the meeting.

EXECUTIVE ACTION ON SB 304

14:48:52 **Motion/Vote:** Sen. Lang moved that **SB 304 BE TABLED**. Motion carried 11-0 by voice vote. Sen. Lynch was excused.

EXHIBIT(nas39a01)

EXECUTIVE ACTION ON SB 371

14:49:37 **Motion/Vote:** Sen. Small moved that **SB 371 BE TABLED**. Motion carried 11-0 by voice vote. Sen. Lynch was excused.

EXHIBIT(nas39a02)

EXECUTIVE ACTION ON SB 233

14:50:25 **Motion:** Sen. Ankney moved that **SB 233 DO PASS**.

14:50:48 **Motion:** Sen. Ankney moved that **SB 233 BE AMENDED**.

EXHIBIT(nas39a03)

Discussion:

14:51:39 Chair Welborn

14:51:59 Sen. Ankney

14:52:19 **Vote:** Motion carried 11-0 by voice vote. Sen. Lynch was excused.

14:52:37 **Motion:** Sen. Ankney moved that **SB 233 DO PASS AS AMENDED**.

Discussion:

14:52:48 Sen. Ankney

14:53:46 Sen. Cohenour

14:54:06 Jason Mohr, Legislative Services Division (LSD)

14:55:02 **Vote:** Motion carried unanimously by roll call vote. Sen. Lynch voted by proxy.

Committee Business:

14:55:52 Chair Welborn

14:57:16 Mr. Mohr, LSD

14:57:27 Chair Welborn

14:57:53 Sen. Lynch entered the meeting.

14:57:58 Sen. Flowers

HEARING ON SB 352

Opening Statement by Sponsor:

14:59:47 Sen. John Esp (R), SD 30, opened the hearing on SB352, Clarify objections to water rights.

EXHIBIT(nas39a04)

Proponents' Testimony:

15:01:32 Alan Redfield, citizen
 15:02:46 Holly Franz, Senior Water Rights Coalition
 15:04:02 Rachel Cone, Montana Farm Bureau Federation
 15:04:24 Mike Murphy, Montana Water Resources Association
 15:04:55 Raylee Honeycutt, Montana Stockgrowers Association

Opponents' Testimony:

15:05:52 Andrew Gorder, Clark Fork Coalition
 15:10:12 Clayton Elliott, Montana Trout Unlimited

Informational Testimony:

15:13:37 Millie Heffner, Water Rights Bureau chief, Department of Natural Resources and Conservation (DNRC)
 15:14:00 Anna Pakenham Stevenson, Water Resources Division administrator, DNRC

Questions from Committee Members and Responses:

15:14:30 Sen. Gillespie
 15:16:57 Ms. Heffner, DNRC
 15:17:29 Sen. Brown
 15:18:18 Mr. Redfield, citizen
 15:18:31 Sen. Flowers
 15:18:57 Sen. Esp

Closing by Sponsor:

15:19:14 Sen. Esp

HEARING ON SB 358

Opening Statement by Sponsor:

15:19:58 Sen. John Esp (R), SD 30, opened the hearing on SB358, Repeal numeric nutrient standards for water quality.

Proponents' Testimony:

15:22:26 Tammy Johnson, Montana Mining Association

EXHIBIT(nas39a05)

15:28:04 Heather McDowell, vice president of legal, environmental and government affairs, Sibanye-Stillwater Montana
 15:30:40 Chair Welborn gave the duties of the chair to Sen. Ankney.
 15:33:43 Dan Rostad, Boulder River Watershed Association

15:36:15 Dave Galt, Montana Petroleum Association
 15:37:41 Peggy Trenk, Treasure State Resources Association
 15:39:37 Tim Burton, executive director, Montana League of Cities and Towns

Opponents' Testimony:

15:41:39 Clayton Elliott, Montana Trout Unlimited
 15:42:57 Dr. Jon Kenning, Department of Environmental Quality (DEQ)
 15:47:42 Betsy Baxter, Big Timber
 15:49:46 Sarah Zuzulock, principal consulting engineer, Zuzulock Environmental Services
 15:57:01 Andrew Gorder, Clark Fork Coalition
 16:00:38 Jerry Iverson, Big Timber; East Boulder Mine oversight committee; Cottonwood Resource Council
 16:03:12 Paul Hawks, rancher, Sweetgrass County; Good Neighbor Agreement oversight committee

16:05:14 Sen. Ankney gave the duties of the chair to Vice Chair Small.

Informational Testimony:

16:05:38 Dr. Michael Suplee, Water Quality Planning Bureau, DEQ

Questions from Committee Members and Responses:

16:06:26 Sen. Cohenour
 16:11:47 Mr. Suplee, DEQ

 16:11:56 Sen. Lynch left the meeting.

 16:12:30 Sen. Flowers
 16:15:00 Mr. Kenning, DEQ

Closing by Sponsor:

16:16:01 Sen. Esp

HEARING ON SB 284

Opening Statement by Sponsor:

16:18:59 Sen. Russel (Russ) Tempel (R), SD 14, opened the hearing on SB284, Generally revise county gravel pit permitting.

[EXHIBIT\(nas39a06\)](#)

[EXHIBIT\(nas39a07\)](#)

Proponents' Testimony:

16:23:06 Eric Bryson, Montana Association of Counties (MACo)
 16:24:53 Shane Gorder, Richland County commissioner; former president, MACo
 16:26:34 Todd Devlin, Prairie County commissioner; former president, MACo
 16:27:31 Larry Hendrickson, Liberty County commissioner
 16:28:34 John Ostlund, Yellowstone County commissioner; former president, MACo
 16:31:11 Shelby DeMars, Montana Association of Oil, Gas, & Coal Counties
 16:32:15 Abigail St. Lawrence, Montana Building Industry Association
 16:33:23 Bob Gilbert, Phillips County; Musselshell County

Opponents' Testimony:

16:34:20 Glenn Marx, executive director, Montana Association of Land Trusts
16:39:33 Dave Galt, Montana Contractors' Association
16:41:49 Whitner Chase, Montana Conservation Voters
16:42:55 Ed Coleman, Coal and Open Cut Mining Bureau chief, Department of
Environmental Quality (DEQ)

EXHIBIT(nas39a08)

16:45:28 Mike Newton, Fisher Sand & Gravel Company
16:48:27 Amy Seaman, Montana Audubon

EXHIBIT(nas39a09)

Informational Testimony:

16:53:12 Chris Cronin, supervisor, Opencut Mining Section, DEQ

Questions from Committee Members and Responses:

16:53:32 Sen. Pomnichowski
16:55:01 Mr. Cronin, DEQ
16:55:16 Sen. Pomnichowski
16:55:56 Sen. Tempel
16:56:27 Sen. Pomnichowski
16:57:23 Mr. Bryson, MACo
16:58:47 Sen. Pomnichowski
16:59:06 Mr. Cronin
17:00:26 Sen. Lang
17:01:05 Ms. Seaman, Montana Audubon
17:01:44 Sen. Lang
17:05:56 Mr. Cronin
17:06:07 Sen. Flowers
17:07:56 Mr. Cronin
17:08:10 Sen. Flowers
17:08:26 Sen. Lang
17:08:54 Sen. Tempel

Closing by Sponsor:

17:09:45 Sen. Tempel

17:11:00 Sen. Lang left the meeting.

HEARING ON SB 302

Opening Statement by Sponsor:

17:12:11 Sen. Walt Sales (R), SD 35, opened the hearing on SB302, Extend authorization
deadline for use of navigable riverbed.

Proponents' Testimony:

17:13:25 Krista Lee Evans, Senior Water Rights Coalition; Association of Gallatin
Agricultural Irrigators
17:14:26 Mike Murphy, Montana Water Resources Association
17:15:23 Raylee Honeycutt, Montana Stockgrowers Association

17:15:43 Rachel Cone, Montana Farm Bureau Federation
17:16:09 Clayton Elliott, Montana Trout Unlimited

Opponents' Testimony: None

Informational Testimony:

17:17:02 Shawn Thomas, Trust Land Management Division administrator, Department of
Natural Resource and Conservation (DNRC)
17:17:36 Brian Bramblett, attorney, DNRC

Questions from Committee Members and Responses: None

Closing by Sponsor:

17:18:09 Sen. Sales

HEARING ON SB 348

Opening Statement by Sponsor:

17:18:25 Sen. Walt Sales (R), SD 35, opened the hearing on SB348, Revise laws for use
of reclaimed wastewater for snowmaking.

Proponents' Testimony:

17:21:37 Rich Chandler, Lone Mountain Land Company, Big Sky

[EXHIBIT\(nas39a10\)](#)

[EXHIBIT\(nas39a11\)](#)

17:24:09 Krista Lee Evans, Association of Gallatin Agricultural Irrigators
17:25:04 Clayton Elliott, Montana Trout Unlimited

Opponents' Testimony: None

Informational Testimony:

17:26:23 Kevin Smith, Water Quality Division, Department of Environmental Quality
17:26:44 Millie Heffner, Water Rights Bureau chief, Department of Natural Resources and
Conservation (DNRC)
17:27:09 Laura Rennick, operations manager, Water Resources Division, DNRC

Questions from Committee Members and Responses:

17:27:29 Sen. Gillespie
17:28:09 Mr. Chandler, Lone Mountain Land Company

Closing by Sponsor:

17:28:49 Sen. Sales

17:29:40 Chair Small gave the duties of the chair to Sen. Welborn.

EXECUTIVE ACTION ON SB 302

17:30:06 **Motion/Vote:** Sen. Small moved that **SB 302 DO PASS**. Motion carried 11-0 by
voice vote. Sen. Lynch voted by proxy. Sen. Lang was excused.

EXECUTIVE ACTION ON SB 348

17:30:54 **Motion:** Sen. Small moved that **SB 348 DO PASS.**

Discussion:

17:31:22 Sen. Pomnichowski

17:31:52 Sen. Hoven

17:32:12 Sen. Small

17:32:23 Sen. Sales

17:32:55 Sen. Brown

17:33:15 **Vote:** Motion carried 11-0 by voice vote. Sen. Lynch voted by proxy. Sen. Lang was excused.

Committee Business:

17:33:49 Sen. Welborn

17:34:33 Jason Mohr, Legislative Services Division (LSD)

17:35:48 Chair Welborn

17:36:08 Sen. Flowers

17:36:23 Sen. Lynch entered the meeting.

17:36:35 Mr. Mohr, LSD

17:36:58 Sen. Ankney left the meeting.

17:37:18 Sen. Small left the meeting.

17:38:06 Sen. Flowers

EXECUTIVE ACTION ON SB 284

17:39:49 **Motion:** Sen. Jacobson moved that **SB 284 DO PASS.**

Discussion:

17:40:27 Sen. Jacobson

17:41:02 **Vote:** Motion carried 7-5 by roll call vote with Sen. Cohenour, Sen. Flowers, Sen. Jacobson, Sen. Lynch and Sen. Pomnichowski voting no. Sen. Ankney, Sen. Lang and Sen. Small voted by proxy.

EXECUTIVE ACTION ON SB 358

17:42:03 **Motion:** Sen. Brown moved that **SB 358 DO PASS.**

Discussion:

17:42:23 Sen. Cohenour

17:42:58 **Substitute Motion/Vote:** Sen. Cohenour made a substitute motion that **SB 358 BE TABLED**. Substitute motion carried 7-5 by roll call vote with Sen. Ankney, Sen. Brown, Sen. Gillespie, Sen. Lang and Sen. Small voting no. Sen. Ankney, Sen. Lang and Sen. Small voted by proxy.

ADJOURNMENT

Adjournment: 5:44 PM

Lauren de Paepe, Secretary

Id

Additional Documents:

EXHIBIT([nas39aad.pdf](#))

SENATE NATURAL RESOURCES

Exhibit No. 3

Date 2-24-21

Bill No. SB 233

Amendment - 1st Reading - Requested by: Duane Ankney

67th Legislature

Drafter: Joe Kolman, 406-444-3747

SB 233.1.1

1 SENATE BILL NO. 233
2 INTRODUCED BY D. ANKNEY
3
4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATED TO THE BOARD OF
5 ENVIRONMENTAL REVIEW; REASSIGNING DUTIES AND POWERS OF THE BOARD OF
6 ENVIRONMENTAL REVIEW; TRANSFERRING RULEMAKING AUTHORITY; PROVIDING RULEMAKING
7 AUTHORITY; AMENDING SECTIONS 7-13-4502, 7-13-4513, 7-13-4517, ~~15-24-3001, 37-42-102, 37-42-321,~~
8 ~~50-2-116, 50-79-401, 50-79-403, 75-1-220, 75-1-1001, 75-2-103, 75-2-104, 75-2-105, 75-2-111, 75-2-112, 75-~~
9 ~~2-201, 75-2-202, 75-2-203, 75-2-204, 75-2-206, 75-2-207, 75-2-211, 75-2-212, 75-2-213, 75-2-215, 75-2-217,~~
10 ~~75-2-218, 75-2-219, 75-2-220, 75-2-221, 75-2-231, 75-2-234, 75-2-301, 75-2-302, 75-2-401, 75-2-402, 75-2-~~
11 ~~411, 75-2-421, 75-2-422, 75-2-425, 75-2-426, 75-2-428, 75-2-515, 75-5-103, 75-5-105, 75-5-106, 75-5-201, 75-~~
12 ~~5-202, 75-5-203, 75-5-222, 75-5-301, 75-5-302, 75-5-303, 75-5-304, 75-5-305, 75-5-307, 75-5-308, 75-5-310,~~
13 ~~75-5-311, 75-5-312, 75-5-313, 75-5-314, 75-5-315, 75-5-316, 75-5-318, 75-5-401, 75-5-402, 75-5-403, 75-5-~~
14 ~~404, 75-5-502, 75-5-514, 75-5-515, 75-5-516, 75-5-611, 75-5-614, 75-5-621, 75-5-641, 75-5-702, 75-5-802, 75-~~
15 ~~6-102, 75-6-104, 75-6-105, 75-6-106, 75-6-107, 75-6-108, 75-6-109, 75-6-112, 75-6-113, 75-6-116, 75-6-121,~~
16 ~~75-6-131, 75-10-103, 75-10-104, 75-10-112, 75-10-115, 75-10-203, 75-10-206, 75-10-221, 75-10-223, 75-10-~~
17 ~~224, 75-10-227, 75-10-403, 75-10-406, 75-10-408, 75-10-409, 75-10-413, 75-10-414, 75-10-417, 75-10-418,~~
18 ~~75-10-424, 75-10-501, 75-10-515, 75-10-540, 75-10-714, 75-10-727, 75-10-732, 75-10-736, 75-10-1201, 75-~~
19 ~~10-1221, 75-10-1222, 75-11-203, 75-11-211, 75-11-218, 75-11-219, 75-11-223, 75-11-224, 75-11-503, 75-11-~~
20 ~~505, 75-11-508, 75-11-509, 75-11-512, 75-11-513, 75-11-516, 75-11-525, 75-20-104, 75-20-105, 75-20-201,~~
21 ~~75-20-207, 75-20-208, 75-20-211, 75-20-215, 75-20-216, 75-20-219, 75-20-223, 75-20-301, 75-20-303, 75-20-~~
22 ~~304, 75-20-401, 75-20-406, 75-20-407, 75-20-410, 75-20-411, 75-20-1001, 75-20-1202, 75-20-1203, 75-20-~~
23 ~~1205, 75-26-301, 75-26-304, 76-3-622, 76-4-102, 76-4-108, 76-4-126, 76-4-1001, 80-15-102, 80-15-105, 80-~~
24 ~~15-110, 80-15-201, 82-4-102, 82-4-103, 82-4-112, 82-4-123, 82-4-129, 82-4-130, 82-4-203, 82-4-205, 82-4-~~
25 ~~206, 82-4-207, 82-4-223, 82-4-226, 82-4-227, 82-4-231, 82-4-232, 82-4-234, 82-4-235, 82-4-239, 82-4-251, 82-~~
26 ~~4-254, 82-4-303, 82-4-304, 82-4-305, 82-4-309, 82-4-321, 82-4-332, 82-4-335, 82-4-338, 82-4-339, 82-4-342,~~
27 ~~82-4-353, 82-4-361, 82-4-362, 82-4-371, 82-4-403, 82-4-406, 82-4-422, 82-4-427, 82-4-437, 82-4-441, 82-4-~~

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1 ~~442, 82-4-445, 82-4-1001, AND 82-15-102, AND 82-15-120, MCA; AND REPEALING SECTIONS 2-15-3502,~~
2 ~~75-2-111, 75-6-103, 75-10-106, 82-4-111, AND 82-4-204, MCA; AND PROVIDING AN EFFECTIVE DATE."~~
3
4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
5
6 **Section 1.** Section 7-13-4502, MCA, is amended to read:
7 **"7-13-4502. Definitions.** As used in this part, unless the context indicates otherwise, the following
8 definitions apply:
9 (1) "Board of directors" means the board of directors provided for in 7-13-4516 or a joint board of
10 directors provided for in 7-13-4527.
11 ~~(2) "Board of environmental review" means the board of environmental review as provided in 2-15-~~
12 ~~3502.~~
13 ~~(3)(2)~~ "Commissioners" means the board of county commissioners or the governing body of a city-
14 county consolidated government.
15 (3) "Department" means the department of environmental quality provided for in 2-15-3501.
16 (4) "Family residential unit" means a single-family dwelling.
17 (5) "Fee-assessed units" means all real property with improvements, including taxable and tax-
18 exempt property as shown on the property assessment records maintained by the county, and mobile homes
19 and manufactured homes as defined in 15-24-201.
20 (6) "Local water quality district" means an area established with definite boundaries for the purpose of
21 protecting, preserving, and improving the quality of surface water and ground water in the district as authorized
22 by this part."
23
24 **Section 2.** Section 7-13-4513, MCA, is amended to read:
25 **"7-13-4513. Insufficient protest to bar proceedings -- resolution creating district -- power to**
26 **implement local water quality program.** (1) The commissioners may create a local water quality district,
27 establish fees, and appoint a board of directors if the commissioners find that insufficient protests have been
28 made in accordance with 7-13-4511 or if the registered voters who reside in the proposed district have

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1 approved a referendum as provided in 7-13-4512.

2 (2) To create a local water quality district, the commissioners shall pass a resolution in accordance
3 with the resolution of intention introduced and passed by the commissioners or in accordance with the terms of
4 the referendum.

5 (3) The commissioners and board of directors may implement a local water quality program after the
6 program is approved by the ~~board of environmental review department~~ pursuant to 75-5-311."

7
8 **Section 3.** Section 7-13-4517, MCA, is amended to read:

9 **"7-13-4517. Powers and duties of board of directors.** The board of directors of a local water quality
10 district, with the approval of the commissioners, may:

11 (1) develop a local water quality program, to be submitted to the ~~board of environmental review~~
12 ~~department~~, for the protection, preservation, and improvement of the quality of surface water and ground water
13 in the district. In developing the program, the board of directors shall consult with the board or boards of
14 supervisors of conservation districts, established as provided in 76-15-201, whose geographical area of
15 jurisdiction is included within the boundaries of the local water quality district.

16 (2) implement a local water quality program;

17 (3) administer the budget of the local water quality district;

18 (4) employ personnel;

19 (5) purchase, rent, or lease equipment and material necessary to develop and implement an effective
20 program;

21 (6) cooperate or contract with any corporation, association, individual, or group of individuals,
22 including any agency of the federal, state, or local government, in order to develop and implement an effective
23 program;

24 (7) receive gifts, grants, or donations for the purpose of advancing the program and acquire, by gift,
25 deed, or purchase, land necessary to implement the local water quality program;

26 (8) administer local ordinances that are adopted by the commissioners and governing bodies of the
27 participating cities and towns and that pertain to the protection, preservation, and improvement of the quality of
28 surface water and ground water;

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1 (9) apply for and receive from the federal government or the state government, on behalf of the local
2 water quality district, money to aid the local water quality program;

3 (10) borrow money for assistance in planning or refinancing a local water quality district and repay
4 loans with the money received from the established fees; and

5 (11) construct facilities that cost not more than \$5,000 and maintain facilities necessary to accomplish
6 the purposes of the district, including but not limited to facilities for removal of water-borne contaminants; water
7 quality improvement; sanitary sewage collection, disposal, and treatment; and storm water or surface water
8 drainage collection, disposal, and treatment."

9 **Section 4.** ~~Section 15-24-3001, MCA, is amended to read:~~

10 ~~"15-24-3001.—Electrical generation and transmission facility exemption—definitions.—(1)(a)~~
11 ~~Except as provided in subsections (1)(b) and (3), an electrical generation facility and related delivery facilities~~
12 ~~constructed in the state of Montana after May 5, 2001, and before January 1, 2006, may be exempt from~~
13 ~~property taxation for a 10-year period beginning on the date that an owner or operator of an electrical~~
14 ~~generation facility and related delivery facilities commences to construct the facility as defined in 75-20-~~
15 ~~104(6)(a) and (6)(b) 75-20-104(5)(a) and (5)(b). In order to be exempt from property taxation, an owner and~~
16 ~~operator of an electrical generation facility and related delivery facilities shall offer contracts to sell 50% of that~~
17 ~~facility's net generating output at a cost-based rate, which includes a rate of return not to exceed 12%, to~~
18 ~~customers for a 20-year period from the date of the facility's completion.~~

19 ~~(b)—The property tax exemption allowed under subsection (1)(a) is limited to a 5-year period for~~
20 ~~generation facilities powered by oil or gas turbines.~~

21 ~~(2)—To the extent that 50% of the net generating output of the facility is not contracted for delivery to~~
22 ~~consumers for a contract term extending 5 years to 20 years from the completion of the facility, as determined~~
23 ~~by the owner, surplus capacity must be offered on a declining contract term basis for the remainder of the~~
24 ~~contract period at a cost-based rate that includes a rate of return not to exceed 12%. Surplus capacity that is~~
25 ~~not contracted for in this fashion may be sold at market rates.~~

26 ~~(3)—(a)—Except as provided in subsection (3)(c), if an owner or operator of property exempt from~~
27 ~~taxation under subsection (1)(a) signs a contract to sell power as required in subsection (1) and then fails to~~
28 ~~perform the contract during the first 10-year period, the 10-year property tax exemption in subsection (1) is void~~

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1 and the property is subject to a rollback tax as provided in 15-24-3002.
2 (b) Except as provided in subsection (3)(c), if an owner or operator of property exempt from taxation
3 under subsection (1)(b) signs a contract to sell power as required in subsection (1) and then fails to perform the
4 contract during the first 5-year period, the 5-year property tax exemption in subsection (1) is void and the
5 property is subject to a rollback tax as provided in 15-24-3002.
6 (c) If an owner or operator fails to perform the contract due to earthquakes or other acts of God, theft,
7 sabotage, acts of war, other social instabilities, or equipment failure, the property tax exemption in subsection
8 (1)(a) or (1)(b) is not void and the owner or operator is not subject to the rollback tax as provided in 15-24-3002.
9 (4) For the purposes of this section, the following definitions apply:
10 (a) (i) "Electrical generation facility" means any combination of a physically connected generator or
11 generators, associated prime movers, and other associated property, including appurtenant land and
12 improvements and personal property, that are normally operated together to produce 20 average megawatts or
13 more of electric power. The term is limited to generating facilities that produce electricity from coal-fired steam
14 turbines, oil or gas turbines, or turbine generators that are driven by falling water.
15 (ii) The term does not include:
16 (A) electrical generation facilities used for noncommercial purposes or exclusively for agricultural
17 purposes; or
18 (B) a qualifying small power production facility, as that term is defined in 16 U.S.C. 796(17), that is
19 owned and operated by a person not primarily engaged in the generation or sale of electricity other than electric
20 power from a small power production facility and that is classified under 15-6-134 and 15-6-138.
21 (b) "Related delivery facilities" means transmission facilities necessary to deliver the energy from the
22 electrical generation facility to the existing network transmission system.
23 (c) "Surplus capacity" means that portion of the 50% of net generating output not contracted for use.
24 (5) The department shall appraise exempt electrical generation facilities for each year that the
25 property is exempt and determine the taxable value of the property as if it were subject to property taxation."
26
27 Section 5. Section 37-42-102, MCA, is amended to read:
28 "37-42-102. Definitions. Unless the context requires otherwise, in this chapter, the following

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1 definitions apply:
2
3 (1) "Board" means the board of environmental review provided for in 2-15-3502.
4 (2)(1) "Certificate" means a certificate of competency issued by the department, stating that the
5 operator holding the certificate has met the requirements for the specified operator classification of the
6 certification program.
7 (3)(2) "Community water system" means a public water supply system that serves at least 15 service
8 connections used by year-round residents or that regularly serves at least 25 year-round residents.
9 (4)(3) "Council" means the water and wastewater operators' advisory council provided for in 2-15-
10 2105.
11 (5)(4) "Department" means the department of environmental quality provided for in 2-15-3504.
12 (6)(5) "Industrial waste" means any waste substance from the processes of business or industry or
13 from the development of a natural resource, together with any sewage that may be present.
14 (7)(6) "Industrial waste discharge system" means a system that discharges industrial waste into state
15 waters.
16 (8)(7) "Nontransient noncommunity water system" means a public water system, as defined in 75-6-
17 202, that is not a community system and that regularly serves at least 25 of the same persons for at least 6
18 months a year.
19 (9)(8) "Operator" means the person in direct responsible charge of the operation of a water treatment
20 plant, water distribution system, or wastewater treatment plant.
21 (10)(9) "State waters" means the term as defined in 75-6-102.
22 (11)(10) "Wastewater treatment plant" means a facility that:
23 (a) is designed to remove solids, bacteria, or other harmful constituents of sewage, industrial waste,
24 or other wastes; and
25 (b) is part of either an industrial waste discharge system or a public sewage system as defined in 75-
26 6-102.
27 (12)(11) "Water distribution system" means that portion of the water supply system that conveys water
28 from the water treatment plant or other supply source to the premises of the consumer and that is part of a

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- 1 community water system or a nontransient noncommunity water system.
- 2 ~~(13)(12) "Water supply system" means a system of pipes, structures, and facilities through which water~~
- 3 ~~is obtained, treated, sold, distributed, or otherwise offered to the public for household use or use by humans~~
- 4 ~~and that is part of a community water system or a nontransient noncommunity water system.~~
- 5 ~~(14)(13) "Water treatment plant" means that portion of the water supply system that alters either the~~
- 6 ~~physical, chemical, or bacteriological quality of the water and renders it safe and palatable for human use."~~
- 7
- 8 **Section 6. Section 37-42-321, MCA, is amended to read:**
- 9 **"37-42-321. Revocation of operator's certificate — disciplinary action by department.** (1) The
- 10 department may issue an order revoking the certificate of an operator when the department finds that:
- 11 (a) the operator has practiced fraud or deception;
- 12 (b) reasonable care, judgment, or the application of the operator's knowledge or ability was not used
- 13 in the performance of the operator's duties; or
- 14 (c) the operator is incompetent or unable to properly perform the operator's duties.
- 15 (2) The department may issue an order taking any disciplinary action listed in 37-1-136.
- 16 (3) A person aggrieved by an order of the department under this section may request a hearing
- 17 before the board ~~department~~ by submitting a written request stating the reason for the request within 30 days
- 18 after receipt of the department's decision.
- 19 (4) The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4,
- 20 ~~part 6, apply to a hearing held under this section."~~
- 21
- 22 **Section 5. Section 50-2-116, MCA, is amended to read:**
- 23 **"50-2-116. Powers and duties of local boards of health.** (1) In order to carry out the purposes of
- 24 the public health system, in collaboration with federal, state, and local partners, each local board of health shall:
- 25 (a) appoint and fix the salary of a local health officer who is:
- 26 (i) a physician;
- 27 (ii) a person with a master's degree in public health; or
- 28 (iii) a person with equivalent education and experience, as determined by the department;

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- 1 (b) elect a presiding officer and other necessary officers;
- 2 (c) employ qualified staff;
- 3 (d) adopt bylaws to govern meetings;
- 4 (e) hold regular meetings at least quarterly and hold special meetings as necessary;
- 5 (f) identify, assess, prevent, and ameliorate conditions of public health importance through:
- 6 (i) epidemiological tracking and investigation;
- 7 (ii) screening and testing;
- 8 (iii) isolation and quarantine measures;
- 9 (iv) diagnosis, treatment, and case management;
- 10 (v) abatement of public health nuisances;
- 11 (vi) inspections;
- 12 (vii) collecting and maintaining health information;
- 13 (viii) education and training of health professionals; or
- 14 (ix) other public health measures as allowed by law;
- 15 (g) protect the public from the introduction and spread of communicable disease or other conditions of
- 16 public health importance, including through actions to ensure the removal of filth or other contaminants that
- 17 might cause disease or adversely affect public health;
- 18 (h) supervise or make inspections for conditions of public health importance and issue written orders
- 19 for compliance or for correction, destruction, or removal of the conditions;
- 20 (i) bring and pursue actions and issue orders necessary to abate, restrain, or prosecute the violation
- 21 of public health laws, rules, and local regulations;
- 22 (j) identify to the department an administrative liaison for public health. The liaison must be the local
- 23 health officer in jurisdictions that employ a full-time local health officer. In jurisdictions that do not employ a full-
- 24 time local health officer, the liaison must be the highest ranking public health professional employed by the
- 25 jurisdiction.
- 26 (k) subject to the provisions of 50-2-130, adopt necessary regulations that are not less stringent than
- 27 state standards for the control and disposal of sewage from private and public buildings and facilities that are
- 28 not regulated by Title 75, chapter 6, or Title 76, chapter 4. The regulations must describe standards for granting

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1 variances from the minimum requirements that are identical to standards promulgated by the board of
2 environmental review ~~department of environmental quality~~ and must provide for appeal of variance decisions to
3 the department ~~of environmental quality~~ as required by 75-5-305. If the local board of health regulates or
4 permits water well drilling, the regulations must prohibit the drilling of a well if the well isolation zone, as defined
5 in 76-4-102, encroaches onto adjacent private property without the authorization of the private property owner.
6 (2) Local boards of health may:
7 (a) accept and spend funds received from a federal agency, the state, a school district, or other
8 persons or entities;
9 (b) adopt necessary fees to administer regulations for the control and disposal of sewage from private
10 and public buildings and facilities;
11 (c) adopt regulations that do not conflict with 50-50-126 or rules adopted by the department:
12 (i) for the control of communicable diseases;
13 (ii) for the removal of filth that might cause disease or adversely affect public health;
14 (iii) subject to the provisions of 50-2-130, for sanitation in public and private buildings and facilities that
15 affects public health and for the maintenance of sewage treatment systems that do not discharge effluent
16 directly into state water and that are not required to have an operating permit as required by rules adopted
17 under 75-5-401;
18 (iv) subject to the provisions of 50-2-130 and Title 50, chapter 48, for tattooing and body-piercing
19 establishments and that are not less stringent than state standards for tattooing and body-piercing
20 establishments;
21 (v) for the establishment of institutional controls that have been selected or approved by the:
22 (A) United States environmental protection agency as part of a remedy for a facility under the federal
23 Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9601, et seq.; or
24 (B) department of environmental quality as part of a remedy for a facility under the Montana
25 Comprehensive Environmental Cleanup and Responsibility Act, Title 75, chapter 10, part 7; and
26 (vi) to implement the public health laws; and
27 (d) promote cooperation and formal collaborative agreements between the local board of health and
28 tribes, tribal organizations, and the Indian health service regarding public health planning, priority setting,

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1 information and data sharing, reporting, resource allocation, service delivery, jurisdiction, and other matters
2 addressed in this title.

3 (3) A local board of health may provide, implement, facilitate, or encourage other public health
4 services and functions as considered reasonable and necessary."
5

6 ~~Section 8.-Section 50-79-401, MCA, is amended to read:~~

7 ~~"50-79-401.—Administrative hearings.—In a proceeding under this chapter for granting, suspending,~~
8 ~~revoking, or amending a license or for determining compliance with or granting exceptions from rules adopted~~
9 ~~under this chapter, the board of environmental review ~~department~~ shall first afford an opportunity for a hearing~~
10 ~~on the record upon the request of a person whose interest may be affected by the proceeding and shall admit~~
11 ~~the person as a party to the proceeding."~~

13 ~~Section 9.-Section 50-79-403, MCA, is amended to read:~~

14 ~~"50-79-403.—Emergency orders and rules.—When the department finds that an emergency exists~~
15 ~~requiring immediate action to protect the public health and safety, the department may, without notice or~~
16 ~~hearing, issue a rule or order reciting the existence of the emergency and requiring that such action be taken as~~
17 ~~considered necessary to meet the emergency. Notwithstanding any provision of this chapter to the contrary, the~~
18 ~~rule or order is effective immediately. A person to whom the rule or order is directed shall comply with it~~
19 ~~immediately but on application to the board shall ~~department must~~ be afforded a prompt hearing. On the basis~~
20 ~~of the hearing the emergency rule or order shall ~~must~~ be continued, modified, or revoked by the board~~
21 ~~~~department~~ within 30 days after the hearing or when the emergency no longer exists."~~

23 ~~Section 10.-Section 75-1-220, MCA, is amended to read:~~

24 ~~"75-1-220.—Definitions.—For the purposes of this part, the following definitions apply:~~

25 ~~(1) "Alternatives analysis" means an evaluation of different parameters, mitigation measures, or~~
26 ~~control measures that would accomplish the same objectives as those included in the proposed action by the~~
27 ~~applicant. For a project that is not a state-sponsored project, it does not include an alternative facility or an~~
28 ~~alternative to the proposed project itself. The term includes alternatives required pursuant to Title 75, chapter~~

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1 20.
2 (2)—"Appropriate board" means, for administrative actions taken under this part by the:
3 (a)—department of environmental quality, the board of environmental review, as provided for in 2-15-
4 3502;
5 (b)(a)—department of fish, wildlife, and parks, the fish and wildlife commission, as provided for in 2-15-
6 3402, and the state parks and recreation board, as provided for in 2-15-3406;
7 (c)(b)—department of transportation, the transportation commission, as provided for in 2-15-2502;
8 (d)(c)—department of natural resources and conservation for state trust land issues, the board of land
9 commissioners, as provided for in Article X, section 4, of the Montana constitution;
10 (e)(d)—department of natural resources and conservation for oil and gas issues, the board of oil and
11 gas conservation, as provided for in 2-15-3303; and
12 (f)(e)—department of livestock, the board of livestock, as provided for in 2-15-3102.
13 (3)—"Complete application" means, for the purpose of complying with this part, an application for a
14 permit, license, or other authorization that contains all data, studies, plans, information, forms, fees, and
15 signatures required to be included with the application sufficient for the agency to approve the application under
16 the applicable statutes and rules.
17 (4)—"Cumulative impacts" means the collective impacts on the human environment within the borders
18 of Montana of the proposed action when considered in conjunction with other past, present, and future actions
19 related to the proposed action by location or generic type.
20 (5)—"Environmental review" means any environmental assessment, environmental impact statement,
21 or other written analysis required under this part by a state agency of a proposed action to determine, examine,
22 or document the effects and impacts of the proposed action on the quality of the human and physical
23 environment within the borders of Montana as required under this part.
24 (6)—"Project sponsor" means any applicant, owner, operator, agency, or other entity that is proposing
25 an action that requires an environmental review. If the action involves state agency-initiated actions on state
26 trust lands, the term also includes each institutional beneficiary of any trust as described in The Enabling Act of
27 Congress, approved February 22, 1899, 25 Stat. 676, as amended, the Morrill Act of 1862, 7 U.S.C. 304
28 through 308, and the Morrill Act of 1890, 7 U.S.C. 321 through 329.

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1 (7)—"Public scoping process" means any process to determine the scope of an environmental review.
2 (8)—(a)—"State-sponsored project" means:
3 (i)—a project, program, or activity initiated and directly undertaken by a state agency;
4 (ii)—except as provided in subsection (8)(b)(i), a project or activity supported through a contract, grant,
5 subsidy, loan, or other form of funding assistance from a state agency, either singly or in combination with one
6 or more other state agencies; or
7 (iii)—except as provided in subsection (8)(b)(i), a project or activity authorized by a state agency acting
8 in a land management capacity for a lease, easement, license, or other authorization to act.
9 (b)—The term does not include:
10 (i)—a project or activity undertaken by a private entity that is made possible by the issuance of permits,
11 licenses, leases, easements, grants, loans, or other authorizations to act by the:
12 (A)—department of environmental quality pursuant to Titles 75, 76, or 82;
13 (B)—department of fish, wildlife, and parks pursuant to Title 87, chapter 4, part 4;
14 (C)—board of oil and gas conservation pursuant to Title 82, chapter 14; or
15 (D)—department of natural resources and conservation or the board of land commissioners pursuant to
16 Titles 76, 77, 82, and 85; or
17 (ii)—a project or activity involving the issuance of a permit, license, certificate, or other entitlement for
18 permission to act by another agency acting in a regulatory capacity, either singly or in combination with other
19 state agencies;".
20
21 **Section 6.** Section 75-1-1001, MCA, is amended to read:
22 **"75-1-1001. Penalty factors.** (1) In determining the amount of an administrative or civil penalty to
23 which subsection (4) applies, the department of environmental quality or the district court, as appropriate, shall
24 take into account the following factors:
25 (a) the nature, extent, and gravity of the violation;
26 (b) the circumstances of the violation;
27 (c) the violator's prior history of any violation, which:
28 (i) must be a violation of a requirement under the authority of the same chapter and part as the

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- 1 violation for which the penalty is being assessed;
- 2 (ii) must be documented in an administrative order or a judicial order or judgment issued within 3 years
- 3 prior to the date of the occurrence of the violation for which the penalty is being assessed; and
- 4 (iii) may not, at the time that the penalty is being assessed, be undergoing or subject to administrative
- 5 appeal or judicial review;
- 6 (d) the economic benefit or savings resulting from the violator's action;
- 7 (e) the violator's good faith and cooperation;
- 8 (f) the amounts voluntarily expended by the violator, beyond what is required by law or order, to
- 9 address or mitigate the violation or impacts of the violation; and
- 10 (g) other matters that justice may require.
- 11 (2) After the amount of a penalty is determined under subsection (1), the department of environmental
- 12 quality or the district court, as appropriate, may consider the violator's financial ability to pay the penalty and
- 13 may institute a payment schedule or suspend all or a portion of the penalty.
- 14 (3) The department of environmental quality may accept a supplemental environmental project as
- 15 mitigation for a portion of the penalty. For purposes of this section, a "supplemental environmental project" is an
- 16 environmentally beneficial project that a violator agrees to undertake in settlement of an enforcement action but
- 17 which the violator is not otherwise legally required to perform.
- 18 (4) This section applies to penalties assessed by the department of environmental quality or the
- 19 district court under Title 75, chapters 2, 5, 6, 8, 11, and 20; Title 75, chapter 10, parts 2, 4, 5, and 12; and Title
- 20 76, chapter 4.
- 21 (5) ~~The board of environmental review and the department of environmental quality may, for the~~
- 22 ~~statutes listed in subsection (4) for which each has rulemaking authority,~~ adopt rules to implement this section."

24 **Section 12.** ~~Section 75-2-103, MCA, is amended to read:~~

25 **"75-2-103. Definitions.** ~~Unless the context requires otherwise, in this chapter, the following definitions~~

26 apply:

- 27 (1) ~~"Air contaminant" means dust, fumes, mist, smoke, other particulate matter, vapor, gas, odorous~~
- 28 ~~substances, or any combination of those air contaminants.~~

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- 1 (2) ~~"Air pollutants" means one or more air contaminants that are present in the outdoor atmosphere,~~
- 2 ~~including those pollutants regulated pursuant to section 7412 and Subchapter V of the federal Clean Air Act, 42~~
- 3 ~~U.S.C., 7401, et seq.~~
- 4 (3) ~~"Air pollution" means the presence of air pollutants in a quantity and for a duration that are or tend~~
- 5 ~~to be injurious to human health or welfare, animal or plant life, or property or that would unreasonably interfere~~
- 6 ~~with the enjoyment of life, property, or the conduct of business.~~
- 7 (4) ~~"Associated supporting infrastructure" means:~~
- 8 (a) ~~electric transmission and distribution facilities;~~
- 9 (b) ~~pipeline facilities;~~
- 10 (c) ~~aboveground ponds and reservoirs and underground storage reservoirs;~~
- 11 (d) ~~rail transportation;~~
- 12 (e) ~~aqueducts and diversion dams;~~
- 13 (f) ~~devices or equipment associated with the delivery of an energy form or product produced at an~~
- 14 ~~energy development project; or~~
- 15 (g) ~~other supporting infrastructure, as defined by board department rule, that is necessary for an~~
- 16 ~~energy development project.~~
- 17 (5) ~~"Board" means the board of environmental review provided for in 2-15-3502.~~
- 18 (6)(5) ~~(a) "Commercial hazardous waste incinerator" means:~~
- 19 (i) ~~an incinerator that burns hazardous waste; or~~
- 20 (ii) ~~a boiler or industrial furnace subject to the provisions of 75-10-406.~~
- 21 (b) ~~Commercial hazardous waste incinerator does not include a research and development facility~~
- 22 ~~that receives federal or state research funds and that burns hazardous waste primarily to test and evaluate~~
- 23 ~~waste treatment remediation technologies.~~
- 24 (7)(6) ~~"Department" means the department of environmental quality provided for in 2-15-3501.~~
- 25 (8)(7) ~~"Emission" means a release into the outdoor atmosphere of air contaminants.~~
- 26 (9)(8) ~~(a) "Energy development project" means each plant, unit, or other development and associated~~
- 27 ~~developments, including any associated supporting infrastructure, designed for or capable of;~~
- 28 (i) ~~generating electricity;~~

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1 (ii) ~~producing gas derived from coal;~~
 2 (iii) ~~producing liquid hydrocarbon products;~~
 3 (iv) ~~refining crude oil or natural gas;~~
 4 (v) ~~producing alcohol to be blended for ethanol-blended gasoline and that are eligible for a tax~~
 5 ~~incentive pursuant to Title 15, chapter 70, part 5;~~
 6 (vi) ~~producing biodiesel and that are eligible for a tax incentive for the production of biodiesel pursuant~~
 7 ~~to 15-32-701; or~~
 8 (vii) ~~transmitting electricity through an electric transmission line with a design capacity of equal to or~~
 9 ~~greater than 50 kilovolts.~~
 10 (b) ~~The term does not include a nuclear facility as defined in 75-20-1202.~~
 11 ~~(10)(9) "Environmental protection law" means a law contained in or an administrative rule adopted~~
 12 ~~pursuant to Title 75, chapter 2, 5, 10, or 11.~~
 13 ~~(11)(10) "Hazardous waste" means:~~
 14 ~~(a) a substance defined as hazardous under 75-10-403 or defined as hazardous in department~~
 15 ~~administrative rules adopted pursuant to Title 75, chapter 10, part 4; or~~
 16 ~~(b) a waste containing 2 parts or more per million of polychlorinated biphenyl (PCB);~~
 17 ~~(12)(11) (a) "Incinerator" means any single or multiple chambered combustion device that burns~~
 18 ~~combustible material, alone or with a supplemental fuel or with catalytic combustion assistance, primarily for the~~
 19 ~~purpose of removal, destruction, disposal, or volume reduction of any portion of the input material.~~
 20 ~~(b) Incinerator does not include:~~
 21 ~~(i) safety flares used to combust or dispose of hazardous or toxic gases at industrial facilities, such as~~
 22 ~~refineries, gas sweetening plants, oil and gas wells, sulfur recovery plants, or elemental phosphorus plants;~~
 23 ~~(ii) space heaters that burn used oil;~~
 24 ~~(iii) wood-fired boilers; or~~
 25 ~~(iv) wood waste burners, such as teepee, wigwam, truncated cone, or silo burners.~~
 26 ~~(13)(12) "Medical waste" means any waste that is generated in the diagnosis, treatment, or~~
 27 ~~immunization of human beings or animals, in medical research on humans or animals, or in the production or~~
 28 ~~testing of biologicals. The term includes:~~

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1 (a) ~~cultures and stocks of infectious agents;~~
 2 (b) ~~human pathological wastes;~~
 3 (c) ~~waste human blood or products of human blood;~~
 4 (d) ~~sharps;~~
 5 (e) ~~contaminated animal carcasses, body parts, and bedding that were known to have been exposed~~
 6 ~~to infectious agents during research;~~
 7 (f) ~~laboratory wastes and wastes from autopsy or surgery that were in contact with infectious agents;~~
 8 and
 9 (g) ~~biological waste and discarded material contaminated with blood, excretion, exudates, or~~
 10 ~~secretions from humans or animals.~~
 11 ~~(14)(13) (a) "Oil or gas well facility" means a well that produces oil or natural gas. The term includes:~~
 12 ~~(i) equipment associated with the well and used for the purpose of producing, treating, separating, or~~
 13 ~~storing oil, natural gas, or other liquids produced by the well; and~~
 14 ~~(ii) a group of wells under common ownership or control that produce oil or natural gas and that share~~
 15 ~~common equipment used for the purpose of producing, treating, separating, or storing oil, natural gas, or other~~
 16 ~~liquids produced by the wells.~~
 17 ~~(b) The equipment referred to in subsection (14)(a) (13)(a) includes but is not limited to wellhead~~
 18 ~~assemblies, amine units, prime mover engines, phase separators, heater-treater units, dehydrator units, tanks,~~
 19 ~~and connecting tubing.~~
 20 ~~(c) The term does not include equipment such as compressor engines used for transmission of oil or~~
 21 ~~natural gas.~~
 22 ~~(15)(14) "Person" means an individual, a partnership, a firm, an association, a municipality, a public or~~
 23 ~~private corporation, the state or a subdivision or agency of the state, a trust, an estate, an interstate body, the~~
 24 ~~federal government or an agency of the federal government, or any other legal entity and includes persons~~
 25 ~~resident in Canada.~~
 26 ~~(16)(15) "Principal" means a principal of a corporation, including but not limited to a partner, associate,~~
 27 ~~officer, parent corporation, or subsidiary corporation.~~
 28 ~~(17)(16) "Small business stationary source" means a stationary source that:~~

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- 1 ~~(a)—is owned or operated by a person who employs 100 or fewer individuals;~~
2 ~~(b)—is a small business concern as defined in the Small Business Act, 15 U.S.C. 631, et seq.;~~
3 ~~(c)—is not a major stationary source as defined in Subchapter V of the federal Clean Air Act, 42 U.S.C.~~
4 ~~7661, et seq.;~~
5 ~~(d)—emits less than 50 tons per year of an air pollutant;~~
6 ~~(e)—emits less than a total of 75 tons per year of all air pollutants combined; and~~
7 ~~(f)—is not excluded from this definition under 75-2-108(3).~~
8 ~~(18) (17) (a) "Solid waste" means all putrescible and nonputrescible solid, semisolid, liquid, or~~
9 ~~gaseous wastes, including but not limited to garbage; rubbish; refuse; ashes; swill; food wastes; commercial or~~
10 ~~industrial wastes; medical waste; sludge from sewage treatment plants; water supply treatment plants; or air~~
11 ~~pollution control facilities; construction, demolition, or salvage wastes; dead animals, dead animal parts, offal,~~
12 ~~animal droppings, or litter; discarded home and industrial appliances; automobile bodies, tires, interiors, or parts~~
13 ~~thereof; wood products or wood byproducts and inert materials; styrofoam and other plastics; rubber materials;~~
14 ~~asphalt shingles; tarpaper; electrical equipment; transformers, or insulated wire; oil or petroleum products or oil~~
15 ~~or petroleum products and inert materials; treated lumber and timbers; and pathogenic or infectious waste.~~
16 ~~(b) Solid waste does not include municipal sewage, industrial wastewater effluents, mining wastes~~
17 ~~regulated under the mining and reclamation laws administered by the department of environmental quality, or~~
18 ~~slash and forest debris regulated under laws administered by the department of natural resources and~~
19 ~~conservation."~~
20
21 **Section 13. Section 75-2-104, MCA, is amended to read:**
22 **"75-2-104. Limitations—personal cause of action unabridged—venue. (1) This chapter may not**
23 **be construed to:**
24 **(a)—grant to the board ~~department~~ any jurisdiction or authority with respect to air contamination**
25 **existing solely within commercial and industrial plants, works, or shops;**
26 **(b)—affect the relations between employers and employees with respect to or arising out of any**
27 **condition of air contamination or air pollution;**
28 **(c)—supersede or limit the applicability of any law or ordinance relating to sanitation, industrial health,**

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- 1 or safety; or
2 (d)—abridge, limit, impair, create, enlarge, or otherwise affect substantively or procedurally the right of
3 a person to damages or other relief on account of injury to persons or property and to maintain an action or
4 other appropriate proceeding;
5 (2)—A judicial challenge to a permit issued pursuant to this chapter by a party other than the permit
6 applicant or permit holder must include the party to whom the permit was issued unless otherwise agreed to by
7 the permit applicant or permit holder. All judicial challenges of permits for projects with a project cost, as
8 determined by the court, of more than \$1 million must have precedence over any civil cause of a different
9 nature pending in that court. If the court determines that the challenge was without merit or was for an improper
10 purpose, such as to harass, to cause unnecessary delay, or to impose needless or increased cost in litigation,
11 the court may award attorney fees and costs incurred in defending the action.
12 (3)—An action to challenge a permit decision pursuant to this chapter must be brought in the county in
13 which the permitted activity will occur. If an activity will occur in more than one county, the action may be
14 brought in any of the counties in which the activity will occur.
15 (4)—A judicial action or proceeding pursuant to this chapter for an equine slaughter or processing
16 facility must comply with 81-9-240 and 81-9-241."
17
18 **Section 7. Section 75-2-105, MCA, is amended to read:**
19 **"75-2-105. Confidentiality of records. (1) Records or other information concerning air pollutant**
20 **sources that are furnished to or obtained by the board or department are a matter of public record and open to**
21 **public use. However, any information unique to the owner or operator of an air pollutant source that would, if**
22 **disclosed, reveal methods or processes entitled to protection as trade secrets must be maintained as**
23 **confidential if so determined by a court of competent jurisdiction. The owner or operator shall file a declaratory**
24 **judgment action to establish the existence of a trade secret if the owner or operator wishes the information to**
25 **enjoy confidential status. The department must be served in the action and may intervene as a party in the**
26 **action. A trade secret not intended to be public when submitted to the board or department must be submitted**
27 **in writing and clearly marked as confidential. However, emission data and operating permits issued by the**
28 **department pursuant to 75-2-217 through 75-2-219 may not be considered confidential for the purposes of this**

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1 section.

2 (2) This section does not prevent the use of records or information by the board or department in
3 compiling or publishing analyses or summaries relating to the general condition of the outdoor atmosphere if
4 the analyses or summaries do not identify an owner or operator or reveal information otherwise made
5 confidential by this section."

7 **Section 7.** Section 75-2-111, MCA, is amended to read:

8 **"75-2-111. Powers of board.** The board shall, subject to the provisions of 75-2-207:

9 (1) ~~adopt, amend, and repeal rules for the administration, implementation, and enforcement of this~~
10 ~~chapter, for issuing orders under and in accordance with 42 U.S.C. 7419, and for fulfilling the requirements of~~
11 ~~42 U.S.C. 7420 and regulations adopted pursuant to that section, except that, for purposes other than~~
12 ~~agricultural open burning, the board may not adopt permitting requirements or any other rule relating to:~~

13 (a) ~~any agricultural activity or equipment that is associated with the use of agricultural land or the~~
14 ~~planting, production, processing, harvesting, or storage of agricultural crops by an agricultural producer and that~~
15 ~~is not subject to the requirements of 42 U.S.C. 7475, 7503, or 7661a;~~

16 (b) ~~a commercial operation relating to the activities or equipment referred to in subsection (1)(a) that~~
17 ~~remains in a single location for less than 12 months and is not subject to the requirements of 42 U.S.C. 7475,~~
18 ~~7503, or 7661a; or~~

19 (c) ~~forestry equipment and its associated engine used for forestry practices that remain in a single~~
20 ~~location for less than 12 months and are not subject to the requirements of 42 U.S.C. 7475, 7503, or 7661a;~~

21 (2) (1) hold hearings relating to any aspect of or matter in the administration of this chapter at a place
22 designated by the board. The board may compel the attendance of witnesses and the production of evidence at
23 hearings. The board shall designate an attorney to assist in conducting hearings and shall appoint a reporter
24 who must be present at all hearings and take full stenographic notes of all proceedings, transcripts of which will
25 be available to the public at cost.

26 (3) (2) issue orders necessary to effectuate the purposes of this chapter;

27 (4) ~~by rule require access to records relating to emissions;~~

28 (5) ~~by rule adopt a schedule of fees required for permits, permit applications, and registrations~~

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1 ~~consistent with this chapter;~~

2 (6) (3) have the power to issue orders under and in accordance with 42 U.S.C. 7419."

4 **Section 9.** Section 75-2-112, MCA, is amended to read:

5 **"75-2-112. Powers and responsibilities of department.** (1) The department is responsible for the
6 administration of this chapter.

7 (2) Subject to the provisions of 75-2-207, the department shall:

8 (a) adopt, amend, and repeal rules for the administration, implementation, and enforcement of this
9 chapter, for issuing orders under and in accordance with 42 U.S.C. 7419, and for fulfilling the requirements of
10 42 U.S.C. 7420 and regulations adopted pursuant to that section, except that, for purposes other than
11 agricultural open burning, the department may not adopt permitting requirements or any other rule relating to:

12 (i) any agricultural activity or equipment that is associated with the use of agricultural land or the
13 planting, production, processing, harvesting, or storage of agricultural crops by an agricultural producer and that
14 is not subject to the requirements of 42 U.S.C. 7475, 7503, or 7661a;

15 (ii) a commercial operation relating to the activities or equipment referred to in subsection (2)(a)(i) that
16 remains in a single location for less than 12 months and is not subject to the requirements of 42 U.S.C. 7475,
17 7503, or 7661a; or

18 (iii) forestry equipment and its associated engine used for forestry practices that remain in a single
19 location for less than 12 months and are not subject to the requirements of 42 U.S.C. 7475, 7503, or 7661a;

20 (b) hold hearings relating to any aspect of or matter in the administration of this chapter at a place
21 designated by the department. The department may compel the attendance of witnesses and the production of
22 evidence at hearings. The department shall designate an attorney to assist in conducting hearings and shall
23 appoint a reporter who must be present at all hearings and take full stenographic notes of all proceedings,
24 transcripts of which will be available to the public at cost.

25 (c) (b) issue orders necessary to effectuate the purposes of this chapter;

26 (d) (c) by rule require access to records relating to emissions; and

27 (e) (d) by rule adopt a schedule of fees required for permits, permit applications, and registrations

28 consistent with this chapter;

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1 ~~(f) have the power to issue orders under and in accordance with 42 U.S.C. 7419.~~
2 (2)(3) The department shall:
3 (a) by appropriate administrative and judicial proceedings, enforce orders issued by the department or
4 the former board of environmental review;
5 (b) secure necessary scientific, technical, administrative, and operational services, including
6 laboratory facilities, by contract or otherwise;
7 (c) prepare and develop a comprehensive plan for the prevention, abatement, and control of air
8 pollution in this state;
9 (d) encourage voluntary cooperation by persons and affected groups to achieve the purposes of this
10 chapter;
11 (e) encourage local units of government to handle air pollution problems within their respective
12 jurisdictions on a cooperative basis and provide technical and consultative assistance for this. If local programs
13 are financed with public funds, the department may contract with the local government to share the cost of the
14 program. However, the state share may not exceed 30% of the total cost.
15 (f) encourage and conduct studies, investigations, and research relating to air contamination and air
16 pollution and their causes, effects, prevention, abatement, and control;
17 (g) determine, by means of field studies and sampling, the degree of air contamination and air
18 pollution in the state;
19 (h) make a continuing study of the effects of the emission of air contaminants from motor vehicles on
20 the quality of the outdoor atmosphere of this state and make recommendations to appropriate public and
21 private bodies with respect to this;
22 (i) collect and disseminate information and conduct educational and training programs relating to air
23 contamination and air pollution;
24 (j) advise, consult, contract, and cooperate with other agencies of the state, local governments,
25 industries, other states, interstate and interlocal agencies, the United States, and any interested persons or
26 groups;
27 (k) consult, on request, with any person proposing to construct, install, or otherwise acquire an air
28 contaminant source or device or system for the control thereof concerning the efficacy of this device or system

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1 or the air pollution problems which may be related to the source, device, or system. Nothing in this consultation
2 relieves a person from compliance with this chapter, rules in force under it, or any other provision of law.
3 (l) accept, receive, and administer grants or other funds or gifts from public or private agencies,
4 including the United States, for the purpose of carrying out this chapter. Funds received under this section shall
5 be deposited in the state treasury to the account of the department.
6 (3)(4) The department may assess fees to the applicant for the analysis of the environmental impact
7 of an application to redesignate the classification of any area, except those areas within the exterior boundaries
8 of a reservation of a federally recognized Indian tribe, under the classifications established by 42 U.S.C. 7470
9 through 7479 (prevention of significant deterioration of air quality). The determination of whether or not a fee
10 will be assessed is to be on a case-by-case basis."
11

12 **Section 10.** Section 75-2-201, MCA, is amended to read:

13 **"75-2-201. Classifying and reporting air contaminant sources.** (1) The ~~board~~department may
14 classify air contaminant sources which ~~that~~ in its judgment may cause or contribute to air pollution according to
15 levels and types of emissions and other characteristics which ~~that~~ relate to air pollution and may require
16 reporting for any such class or classes. ~~Such~~The classifications shall ~~must~~ be made with special reference to
17 effects on health, economic and social factors, and physical effects on property and may be applied to the state
18 as a whole or to any designated area.

19 (2) Any person operating or responsible for the operation of air contaminant sources of any class for
20 which the rules of the ~~board~~department may require reporting shall make reports containing ~~such~~any
21 information as may be required concerning location, size and height of contaminant outlets, processes
22 employed, fuels used, and the nature and time periods or duration of emissions and any other matter relevant
23 to air pollution which ~~that~~ is available or reasonably capable of being assembled."
24

25 **Section 11.** Section 75-2-202, MCA, is amended to read:

26 **"75-2-202. Board**~~Department~~ **to set ambient air quality standards.** (1) The ~~board~~department shall
27 establish ambient air quality standards for the state.

28 (2) Ambient air quality standards for fluorides shall ~~must~~ be established through limitations upon the

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1 concentration of fluorides in forage grasses, hay, and silage."

2

3 **Section 12.** Section 75-2-203, MCA, is amended to read:

4 **"75-2-203. Board Department to set emission levels.** (1) The ~~board~~ department may establish the
5 limitations of the levels, concentrations, or quantities of emissions of various pollutants from any source
6 necessary to prevent, abate, or control air pollution. Except as otherwise provided in or pursuant to this section,
7 ~~such those~~ levels, concentrations, or quantities ~~shall be~~ are controlling, and no emission in excess ~~thereof~~ shall
8 ~~be of those levels is~~ lawful.

9 (2) In any area where the concentration of air pollution sources or of population or where the nature of
10 the economy or of land and its uses ~~se may~~ require, the ~~board~~ department may fix more stringent requirements
11 governing the emission of air pollutants than those in effect pursuant to subsection (1) ~~of this section~~.

12 (3) The ~~board~~ department may by rule use any widely recognized measuring system for measuring
13 emission of air contaminants.

14 (4) Should federal minimum standards of air pollution be set by federal law, the ~~board~~ department
15 may, if necessary in some localities of this state, set more stringent standards by rule."

16

17 **Section 13.** Section 75-2-204, MCA, is amended to read:

18 **"75-2-204. Rules relating to construction, installation, alteration, operation, or use.** The ~~board~~
19 department may by rule prohibit the construction, installation, alteration, operation, or use of a machine,
20 equipment, device, or facility that it finds may directly or indirectly cause or contribute to air pollution or that is
21 intended primarily to prevent or control the emission of air pollutants, unless the owner or operator ~~has obtained~~
22 obtains a permit under this part or has registered the source of air contaminants with the department if the
23 source is in a category for which only registration is required by the rules adopted to implement this part."

24

25 **Section 14.** Section 75-2-206, MCA, is amended to read:

26 **"75-2-206. Study of effects of sulfur dioxide on health and environment.** (1) To the extent that
27 funds are available, the ~~board~~ department shall conduct an ongoing study in areas of Montana where there are
28 major industrial sources of sulfur dioxide. The study must concentrate on the effects on human health and the

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1 environment of ambient sulfur dioxide concentrations separately and in conjunction with particulates.

2 (2) Notwithstanding other funding sources to pay for the study, the ~~board~~ department may accept
3 funds and grants from private and public sources."

4

5 **Section 15.** Section 75-2-207, MCA, is amended to read:

6 **"75-2-207. State regulations no more stringent than federal regulations or guidelines --**
7 **exceptions -- procedure.** (1) After April 14, 1995, except as provided in subsections (2) and (3) or unless
8 required by state law, the ~~board or~~ department may not adopt a rule to implement this chapter that is more
9 stringent than the comparable federal regulations or guidelines that address the same circumstances. The
10 ~~board or~~ department may incorporate by reference comparable federal regulations or guidelines.

11 (2) (a) The ~~board or~~ department may adopt a rule to implement this chapter that is more stringent
12 than comparable federal regulations or guidelines only if:

13 (i) a public hearing is held;

14 (ii) public comment is allowed; and

15 (iii) the ~~board or the~~ department makes a written finding after the public hearing and comment period
16 that is based on evidence in the record that the proposed standard or requirement:

17 (A) protects public health or the environment;

18 (B) can mitigate harm to the public health or the environment; and

19 (C) is achievable with current technology.

20 (b) The written finding required under subsection (2)(a)(iii) must reference information and peer-
21 reviewed scientific studies contained in the record that form the basis for the ~~board's or the~~ department's
22 conclusion. The written finding must also include information from the hearing record regarding costs to the
23 regulated community that are directly attributable to the proposed standard or requirement.

24 (c) (i) A person or entity affected by a rule of the ~~board or~~ department adopted after January 1, 1990,
25 and before April 14, 1995, that the person or entity believes is more stringent than comparable federal
26 regulations or guidelines may petition the ~~board or~~ department to review the rule.

27 (ii) If the ~~board or~~ department determines that the rule is more stringent than comparable federal
28 regulations or guidelines, the ~~board or~~ department shall either revise the rule to conform to the federal

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1 regulations or guidelines or follow the process provided in subsections (2)(a) and (2)(b) within a reasonable
2 period of time, not to exceed 6 months after receiving the petition.

3 (iii) A petition under this section does not relieve the petitioner of the duty to comply with the
4 challenged rule. The ~~board or~~ department may charge a petition filing fee in an amount not to exceed \$250.

5 (iv) A person may also petition the ~~board or~~ department for a rule review under subsection (2)(a) if the
6 ~~board or~~ department adopts a rule after January 1, 1990, in an area in which no federal regulations or
7 guidelines existed and the federal government subsequently establishes comparable regulations or guidelines
8 that are less stringent than the previously adopted ~~board or~~ department rule.

9 (3) This section does not apply to a rule adopted under the emergency rulemaking provisions of 2-4-
10 303(1)."

11
12 **Section 16.** Section 75-2-211, MCA, is amended to read:

13 **"75-2-211. Permits for construction, installation, alteration, or use.** (1) The ~~board department~~
14 shall by rule provide for the issuance, modification, suspension, revocation, and renewal of a permit issued
15 under this part.

16 (2) (a) Except as provided in 75-1-208(4)(b), 75-2-234, and subsections (2)(b) and (2)(c) of this
17 section, not later than 180 days before construction, installation, or alteration begins or as a condition of use of
18 any machine, equipment, device, or facility that the ~~board department~~ finds may directly or indirectly cause or
19 contribute to air pollution or that is intended primarily to prevent or control the emission of air pollutants, the
20 owner or operator shall file with the department the appropriate permit application on forms available from the
21 department.

22 (b) Except as provided in subsection (2)(e), the owner or operator of an oil or gas well facility shall file
23 the permit application with the department no later than January 3, 2006, or 60 days after the initial well
24 completion date, whichever is later. For purposes of this section, the initial well completion date for an oil or gas
25 well facility is:

26 (i) for an oil or gas well facility producing oil, the date when the first oil is produced through wellhead
27 equipment into lease tanks from the ultimate producing interval after casing has been run; and

28 (ii) for an oil or gas well facility producing gas, the date when the oil or gas well facility is capable of

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1 producing gas through wellhead equipment from the ultimate producing interval after casing has been run.

2 (c) An owner or operator who complies with subsection (2)(b) may construct, install, or use equipment
3 necessary to complete or operate an oil or gas well facility without a permit until the department's decision on
4 the application is final. If the owner or operator does not comply with subsection (2)(b), the owner or operator
5 may not operate the oil or gas well facility and is liable for a violation of this section for every day of
6 construction, installation, or operation of the facility.

7 (d) The ~~board department~~ shall adopt rules establishing air emission control requirements applicable
8 to an oil or gas well facility during the time from the initial well completion date until the department's decision
9 on the application is final.

10 (e) The provisions of subsections (2)(b) and (2)(c) do not apply to an oil or gas well facility subject to
11 the federal air permitting provisions of 42 U.S.C. 7475 or 7503.

12 (3) The permit program administered by the department pursuant to this section must include the
13 following:

14 (a) requirements and procedures for permit applications, including standard application forms;

15 (b) requirements and procedures for submittal of information necessary to determine the location,
16 quantity, and type of emissions;

17 (c) procedures for public notice and opportunity for comment or public hearing, as appropriate;

18 (d) procedures for providing notice and an opportunity for comment to contiguous states and federal
19 agencies, as appropriate;

20 (e) requirements for inspection, monitoring, recordkeeping, and reporting;

21 (f) procedures for the transfer of permits;

22 (g) requirements and procedures for suspension, modification, and revocation of permits by the
23 department;

24 (h) requirements and procedures for appropriate emission limitations and other requirements,
25 including enforceable measures necessary to ensure compliance with those limitations and requirements;

26 (i) requirements and procedures for permit modification and amendment; and

27 (j) requirements and procedures for issuing a single permit authorizing emissions from similar
28 operations at multiple temporary locations, which permit may include conditions necessary to ensure

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1 compliance with the requirements of this chapter at all authorized locations and a requirement that the owner or
2 operator notify the department in advance of each change in location.

3 (4) This section does not restrict the ~~board's~~ department's authority to adopt regulations providing for
4 a single air quality permit system.

5 (5) Department approval of an application to transfer a portable emission source from one location to
6 another is exempt from the provisions of 75-1-201(1).

7 (6) The department may, for good cause shown, waive or shorten the time required for filing the
8 appropriate applications.

9 (7) The department shall require that applications for permits be accompanied by any plans,
10 specifications, and other information that it considers necessary.

11 (8) An application is not considered filed until the applicant has submitted all fees required under 75-
12 2-220 and all information and completed application forms required pursuant to subsections (2), (3), and (7) of
13 this section. If the department fails to notify the applicant in writing within 30 days after the purported filing of an
14 application that the application is incomplete and fails to list the reasons why the application is considered
15 incomplete, the application is considered filed as of the date of the purported filing.

16 (9) (a) Except as provided in 75-1-205(4) and 75-1-208(4)(b), if an application for a permit requires
17 the preparation of an environmental impact statement under the Montana Environmental Policy Act, Title 75,
18 chapter 1, parts 1 through 3, the department shall notify the applicant in writing of the approval or denial of the
19 application:

20 (i) within 180 days after the department's receipt of a filed application, as provided in subsection (8), if
21 the department prepares the environmental impact statement;

22 (ii) within 30 days after issuance of the final environmental impact statement by the lead agency if a
23 state agency other than the department has been designated by the governor as lead agency for preparation of
24 the environmental impact statement; or

25 (iii) if the application is for a machine, equipment, a device, or a facility at an operation that requires a
26 permit under Title 82, chapter 4, part 1, 2, or 3, within 30 days of issuance of the final environmental impact
27 statement in accordance with time requirements of Title 82, chapter 4, part 1, 2, or 3.

28 (b) If an application does not require the preparation of an environmental impact statement, is not

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1 subject to the provisions of 75-2-215, and is not subject to the federal air quality permitting provisions of 42
2 U.S.C. 7475, 7503, or 7661a, the department shall notify the applicant in writing within 60 days after its receipt
3 of a filed application, as provided in subsection (8), of its approval or denial of the application, except as
4 provided in subsection (14).

5 (c) If an application does not require the preparation of an environmental impact statement and is
6 subject to the federal air permitting provisions of 42 U.S.C. 7475, 7503, or 7661a, the department shall notify
7 the applicant, in writing, within 75 days after its receipt of a filed application, as provided in subsection (8), of its
8 approval or denial of the application.

9 (d) Except as provided in subsection (9)(e), if an application does not require the preparation of an
10 environmental impact statement and is subject to the provisions of 75-2-215, the department shall notify the
11 applicant of its approval or denial of the application, in writing, within 75 days after its receipt of a filed
12 application, as provided in subsection (8).

13 (e) If an application for a permit is for the construction, installation, alteration, or use of a source that
14 is also required to obtain a license pursuant to 75-10-221 or a permit pursuant to 75-10-406, the department
15 shall prepare a single environmental review document pursuant to Title 75, chapter 1, for the permit required
16 under this section and the license or permit required under 75-10-221 or 75-10-406 and act on the applications
17 within the time period provided for in 75-2-215(3)(e).

18 (f) The time for notification may be extended for 30 days by written agreement of the department and
19 the applicant. Additional 30-day extensions may be granted by the department upon the request of the
20 applicant. Notification of approval or denial may be served personally or by certified mail on the applicant or the
21 applicant's agent.

22 (g) Failure by the department to act in a timely manner does not constitute approval or denial of the
23 application. This does not limit or abridge the right of any person to seek available judicial remedies to require
24 the department to act in a timely manner.

25 (10) Except as provided in 75-2-213, when the department approves or denies the application for a
26 permit under this section, a person who is directly and adversely affected by the department's decision may
27 request a hearing before the ~~board~~ department board. The request for hearing must be filed within 15 days after
28 the department renders its decision. An affidavit setting forth the grounds for the request must be filed within 30

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1 days after the department renders its decision. The contested case provisions of the Montana Administrative
2 Procedure Act, Title 2, chapter 4, part 6, apply to a hearing before the ~~board~~department~~board~~ under this
3 subsection.

4 (11) Except as provided in 75-2-213:

5 (a) the department's decision on the application is not final until 15 days have elapsed from the date
6 of the decision;

7 (b) the filing of a request for hearing does not stay the department's decision. However, the ~~board~~
8 ~~department~~department~~board~~ may order a stay upon receipt of a petition and a finding, after notice and opportunity for
9 hearing, that:

10 (i) the person requesting the stay is entitled to the relief demanded in the request for a hearing; or

11 (ii) continuation of the permit during the appeal would produce great or irreparable injury to the person
12 requesting the stay.

13 (c) upon granting a stay, the ~~board~~department~~board~~ may require a written undertaking to be given
14 by the party requesting the stay for the payment of costs and damages incurred by the permit applicant and its
15 employees if the ~~board~~department~~board~~ determines that the permit was properly issued. When requiring an
16 undertaking, the ~~board~~department~~board~~ shall use the same procedures and limitations as are provided in 27-
17 19-306(2) through (4) for undertakings on injunctions.

18 (12) The ~~board~~department shall provide, by rule, a period of 30 days in which the public may submit
19 comments on draft air quality permits for applications that:

20 (a) are subject to the federal air quality permitting provisions of 42 U.S.C. 7475, 7503, or 7661a;

21 (b) are subject to the requirements of 75-2-215; or

22 (c) require the preparation of an environmental impact statement.

23 (13) The ~~board~~department shall provide, by rule, a period of 15 days in which the public may submit
24 comments on draft air quality permits not subject to subsection (12).

25 (14) The ~~board~~department shall provide, by rule, the basis upon which the department may extend by
26 15 days:

27 (a) the period as provided in subsection (13) in which the public may submit comments on draft air
28 quality permits not subject to subsection (12); and

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1 (b) the period for notifying an applicant of its final decision on approval or denial of an application, as
2 provided in subsection (9)(b).

3 (15) (a) The ~~board~~department may adopt rules for issuance, modification, suspension, revocation,
4 renewal, or creation of:

5 (i) general permits covering multiple similar sources; or

6 (ii) other permits covering multiple similar sources.

7 (b) Rules adopted pursuant to subsection (15)(a) may provide for construction and operation under
8 the permit upon authorization by the department or upon notice to the department."

9
10 **Section 17.** Section 75-2-212, MCA, is amended to read:

11 **"75-2-212. Variances -- renewals -- filing fees.** (1) A person who owns or is in control of a plant,
12 building, structure, process, or equipment may apply to the ~~board~~department for an exemption or partial
13 exemption from rules governing the quality, nature, duration, or extent of emissions of air pollutants. The
14 application must be accompanied by information and data that the ~~board~~department may require. The ~~board~~
15 department may grant an exemption or partial exemption if it finds that:

16 (a) the emissions occurring or proposed to occur do not constitute a danger to public health or safety;
17 and

18 (b) compliance with the rules from which an exemption is sought would produce hardship without
19 equal or greater benefits to the public.

20 (2) An exemption or partial exemption may not be granted pursuant to this section except after public
21 hearing on due notice and until the ~~board~~department has considered the relative interests of the applicant,
22 other owners or property likely to be affected by the emissions, and the general public.

23 (3) The exemption or partial exemption may be renewed if a complaint is not made to the ~~board~~
24 department because of it or if, after the complaint has been made and duly considered at a public hearing held
25 by the ~~board~~department on due notice, the ~~board~~department finds that renewal is justified. A renewal may not
26 be granted except on application. An application must be made at least 60 days before the expiration of the
27 exemption or partial exemption. Immediately before application for renewal, the applicant shall give public
28 notice of the application in accordance with rules of the ~~board~~ department. A renewal pursuant to this

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1 subsection must be on the same grounds and subject to the same limitations and requirements as provided in
2 subsection (1).

3 (4) An exemption, partial exemption, or renewal is not a right of the applicant or holder but may be
4 granted at the discretion of the board department. However, a person adversely affected by an exemption,
5 partial exemption, or renewal granted by the board department may obtain judicial review as provided by 75-2-
6 411.

7 (5) This section and an exemption, partial exemption, or renewal granted pursuant to this section may
8 not be construed to prevent or limit the application of the emergency provisions and procedures of 75-2-402 to
9 a person or the person's property.

10 (6) A person who owns or is in control of a plant, building, structure, process, or equipment, which are
11 called facilities, who applies to the board department for an exemption or partial exemption or a renewal of an
12 exemption or partial exemption from a rule governing the quality, nature, duration, or extent of emissions of air
13 pollutants shall submit with the application for variance a sum of not less than \$500 or 2% of the cost of the
14 equipment to bring the facility into compliance with the rule for which a variance is sought, whichever is greater,
15 but not to exceed \$80,000. The department shall prepare a statement of actual costs, and funds in excess of
16 this must be returned to the applicant. The person requesting the variance shall describe the facility in sufficient
17 detail, with accompanying estimates of cost and verifying materials, to permit the department to determine with
18 reasonable accuracy the sum of the fee. For a renewal of an exemption or partial exemption, if a public hearing,
19 environmental impact statement, or appreciable investigation by the department is not necessary, the minimum
20 filing fee applies or the fee may be waived by the department. The filing fee must be deposited in the state
21 special revenue fund provided for in 17-2-102. It is the intent of the legislature that the revenue derived from the
22 filing fees must be used by the department to:

- 23 (a) compile the information required for rendering a decision on the request;
24 (b) compile the information necessary for any environmental impact statements;
25 (c) offset the costs of a public hearing, printing, or mailing; and
26 (d) carry out its other responsibilities under this chapter."
27

28 Section 24. Section 75-2-213, MCA, is amended to read:

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1 ~~"75-2-213.—Energy development project—hearing and procedures.—(1) (a) When the department~~
2 ~~approves or denies the application for a permit under 75-2-211 for an energy development project, the applicant~~
3 ~~or a person who has provided the department with formal comments and who is directly and adversely affected~~
4 ~~by the department's decision may request a hearing before the board department. If the department provided~~
5 ~~an opportunity for public comment on the application, the request for a hearing must be limited to those issues~~
6 ~~raised in comments made to the department during the comment period unless the issues are related to a~~
7 ~~material change in federal or state law made during the comment period, to a judicial decision issued after the~~
8 ~~comment period, or to a material change to the draft permit, which was submitted for public comment, made by~~
9 ~~the department in the final permit decision and upon which the public did not have a meaningful opportunity to~~
10 ~~comment. The request for hearing must be filed within 30 days after the department renders its decision. An~~
11 ~~affidavit setting forth the grounds for the request must be filed with the request for a hearing.~~

12 ~~(b) (i) If a hearing is requested by a person other than the applicant or permittee of an energy~~
13 ~~development project, the applicant or permittee may, by filing a written election with the board department~~
14 ~~within 15 days of receipt of the request for hearing, elect to have the matter proceed to hearing before the~~
15 ~~board department or to have the matter submitted directly to the district court for judicial review of the agency~~
16 ~~decision. The party who requests the hearing may elect to have the matter submitted either to the board~~
17 ~~department for a hearing or to the district court for judicial review by submitting a written election to the board~~
18 ~~department with the request for hearing. If there are conflicting elections between the parties, the matter must~~
19 ~~proceed to district court.~~

20 ~~(ii) If the applicant or permittee is not the person who requested the hearing and has elected to have~~
21 ~~the matter submitted to the district court, the person who submitted the request for a hearing shall file a petition~~
22 ~~for review of the permit decision within 15 days of receipt of notice from the permittee. If the person who~~
23 ~~requested the hearing has elected to have the matter proceed to district court, that person shall file a petition in~~
24 ~~district court within 15 days of filing the request.~~

25 ~~(iii) The petition must be limited to matters raised in the request for hearing and must be filed in the~~
26 ~~county in which the facility is located.~~

27 ~~(iv) If a party does not elect to submit the matter directly to district court, the matter must proceed~~
28 ~~through the contested case process before the board department pursuant to the Montana Administrative~~

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2 (v) —The board ~~department~~ or the district court shall apply the laws and rules in place when the

3 department issued its decision, and the board ~~department~~ or the district court may not consider any issue that

4 was not presented to the department for the department's consideration during the formal comment period

5 unless the issue is related to a material change in federal or state law made during the comment period, to a

6 judicial decision issued after the comment period, or to a material change to the draft permit, which was

7 submitted for public comment, made by the department in the final permit decision and upon which the public

8 did not have a meaningful opportunity to comment.

9 (c) —(i) Except as provided in subsection (1)(c)(ii), if the person requesting the hearing is not the

10 applicant or permittee of an energy development project, the board ~~department~~ or the district court shall require

11 a written undertaking to be given by the party requesting the hearing for the payment of costs and damages

12 incurred by the permit applicant and its employees if the request for a hearing or judicial review was for an

13 improper purpose designed to harass, cause unnecessary delay, or improperly interfere with the issuance of

14 the permit without a reasonable basis in law or fact.

15 (ii) —The board ~~department~~ or the district court may not require a written undertaking if the party

16 requesting the hearing is an indigent person.

17 (d) —If grounds for requesting the hearing are based on alleged error in applying best available control

18 technology requirements, the board ~~department~~ or the district court shall give deference to the best available

19 control technology determination made by the department. The board ~~department~~ or the district court may not

20 reject the best available control technology determination unless the determination was incorrect as a matter of

21 law or the factual basis for the determination was clearly erroneous.

22 (2) —The board ~~department~~ shall issue a final decision within 4 months from the close of the hearing on

23 the merits or, if no hearing is held, within 3 months from the date that briefing by the parties is complete unless

24 the applicant or permittee and the party other than the applicant or permittee agree in writing to an extension of

25 time. The board ~~department~~ shall require the parties to prepare the case for hearing without unreasonable

26 delay.

27 (3) —(a) Any requirement in a permit to commence construction, installation, or alteration within a

28 certain time period is tolled during a contested case or judicial review proceeding, but not by more than 12

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1 months, unless the applicant or permittee in its discretion waives the tolling in writing.

2 (b) —If there are multiple appeals of one permit, tolling under this subsection (3) may not exceed a total

3 of 12 months for all appeals.

4 (c) —The applicant may not engage in construction during the period that the time period is tolled under

5 subsection (3)(a).

6 (4) —The department shall, for good cause shown, waive for up to 1 year any requirement that

7 construction of an energy development project must proceed with due diligence. During the period that a waiver

8 is in effect, an air quality permit does not expire because construction of an energy development project failed

9 to proceed with due diligence."

10

11 **Section 18.** Section 75-2-215, MCA, is amended to read:

12 **"75-2-215. Solid or hazardous waste incineration -- additional permit requirements.** (1) Until the

13 department ~~has issued issues~~ an air quality permit pursuant to 75-2-211 that includes the conditions required

14 by this section, a person may not construct, install, alter, or use a solid or hazardous waste incinerator or a

15 boiler or industrial furnace subject to the provisions of 75-10-406, except as provided in subsection (2).

16 (2) An existing or permitted solid or hazardous waste incinerator or a boiler or industrial furnace

17 subject to the provisions of 75-10-406 is subject to the provisions of subsection (1) only if it incinerates or uses

18 as fuel or would incinerate or use as fuel solid or hazardous waste in an amount, form, kind, or content that

19 changes the nature, character, or composition of its emissions from its design or permitted operation.

20 (3) The department may not issue a permit to a facility described in subsection (1) until:

21 (a) the owner or operator ~~has provided~~ provides to the department's satisfaction:

22 (i) a characterization of emissions and ambient concentrations of air pollutants, including hazardous

23 air pollutants, from any existing emission source at the facility; and

24 (ii) an estimate of emissions and ambient concentrations of air pollutants, including hazardous air

25 pollutants, from the incineration of solid or hazardous waste or the use of hazardous waste as fuel for a boiler

26 or industrial furnace, as proposed in the permit application or modification;

27 (b) if a license is required pursuant to 75-10-221 or a permit is required pursuant to 75-10-406, the

28 applicant has published, in the county where the project is proposed, at least three notices, in accordance with

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- 1 the procedures identified in 7-1-4127, describing the proposed project;
- 2 (c) If a license is required pursuant to 75-10-221 or a permit is required pursuant to 75-10-406, the
- 3 department has conducted a public hearing on an environmental review prepared pursuant to Title 75, chapter
- 4 1, and, as appropriate, provided additional opportunities for the public to review and comment on the permit
- 5 application or modification;
- 6 (d) the department ~~has reached~~ reaches a determination that the projected emissions and ambient
- 7 concentrations will constitute a negligible risk to the public health, safety, and welfare and to the environment;
- 8 and
- 9 (e) the department ~~has issued~~ issues a license pursuant to 75-10-221 or a permit pursuant to 75-10-
- 10 406, if a license or permit is required. The decision to issue, deny, or alter a permit pursuant to 75-2-211 and
- 11 this section must be made within 30 days from when the department issues a license pursuant to 75-10-221 or
- 12 a permit pursuant to 75-10-406 or within 90 days after the receipt of a complete application for a permit or a
- 13 permit alteration under 75-2-211 and this section, whichever is later.
- 14 (4) The department shall require the application of air pollution control equipment, engineering, or
- 15 other operating procedures as necessary to provide reductions of air pollutants, including hazardous air
- 16 pollutants, equivalent to or more stringent than those achieved through the best available control technology.
- 17 (5) The ~~board-department~~ may by rule provide for general air quality permits under the provisions of
- 18 75-2-211 and this section. The rules must cover numerous similar classes or categories of incinerators and
- 19 boilers or industrial furnaces.
- 20 (6) This section does not relieve an owner or operator of a solid or hazardous waste incinerator or a
- 21 boiler or industrial furnace that is not included under subsection (1) from the obligation to obtain any permit
- 22 otherwise required under this chapter or rules implementing this chapter."
- 23
- 24 **Section 19.** Section 75-2-217, MCA, is amended to read:
- 25 **"75-2-217. Operating permit program -- exemptions -- general requirements -- duration.** (1) The
- 26 ~~board-department~~ shall provide by rule for the issuance, expiration, modification, amendment, suspension,
- 27 revocation, and renewal of operating permits as part of an operating permit program to be administered by the
- 28 department under this chapter. The ~~board-department~~ shall promulgate rules that are consistent with the

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- 1 operating permit framework and guidelines outlined in Subchapter V of the federal Clean Air Act and
- 2 implementing regulations.
- 3 (2) This section applies to all sources of air pollutants that are subject to the provisions of Subchapter
- 4 V of the federal Clean Air Act, 42 U.S.C. 7661, et seq.
- 5 (3) A person may not violate any requirement of an operating permit issued under 75-2-218 and this
- 6 section or operate any source required to have a permit under this section without having complied with the
- 7 requirements of the operating permit program administered by the department pursuant to 75-2-218, 75-2-219,
- 8 and this section.
- 9 (4) The ~~board-department~~ may by rule provide for the exemption of one or more source categories, in
- 10 whole or in part, from all or part of the requirements of this section if the ~~board-department~~ determines that
- 11 compliance with the requirements of this section is impracticable, infeasible, or unnecessarily burdensome for
- 12 the sources. The ~~board-department~~ may premise this determination upon a similar determination by the
- 13 appropriate federal agency acting pursuant to the federal Clean Air Act, 42 U.S.C. 7401, et seq.
- 14 (5) The ~~board-department~~ may by rule provide for general operating permits covering numerous
- 15 similar sources.
- 16 (6) An operating permit issued by the department under 75-2-218 and this section is effective for a
- 17 period not to exceed 5 years and may be renewed.
- 18 (7) The operating permit program administered by the department pursuant to this section must
- 19 include the following:
- 20 (a) adequate procedures that are streamlined and reasonable for:
- 21 (i) expeditiously determining when applications are complete;
- 22 (ii) processing applications; and
- 23 (iii) expeditiously reviewing permit actions, including application renewals or revisions;
- 24 (b) requirements and procedures for submittal of information necessary to determine the location,
- 25 quantity, and type of emissions;
- 26 (c) procedures for public notice and opportunity for comment or public hearing, as appropriate;
- 27 (d) procedures for providing notice and an opportunity for comment to contiguous states and federal
- 28 agencies, as appropriate;

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- 1 (e) requirements for inspection, monitoring, recordkeeping, compliance certification, and reporting;
- 2 (f) deadlines for submitting permit applications and compliance plans that are not later than 12
- 3 months after the source becomes subject to the operating permit requirement;
- 4 (g) deadlines for submitting permit renewal applications that are not later than 6 months before
- 5 expiration of the existing operating permit;
- 6 (h) requirements for compliance plans that must be submitted with permit and renewal applications,
- 7 including schedules of compliance and progress reports;
- 8 (i) requirements and procedures for periodic certification of source compliance with permit
- 9 requirements, including the prompt reporting of any deviations from permit requirements;
- 10 (j) requirements for submission of any plans, specifications, or other information that the department
- 11 considers necessary under this section;
- 12 (k) conditions and procedures for the transfer of operating permits;
- 13 (l) requirements and procedures for suspension, modification, amendment, and revocation of permits
- 14 by the department for cause, including the modification or amendment of permits before renewal or termination
- 15 to incorporate applicable limitations or requirements effective after permit issuance;
- 16 (m) requirements and procedures for incorporating into permits and permit renewals all applicable
- 17 emission limitations and other requirements, including enforceable measures necessary to ensure compliance
- 18 with those limitations and requirements;
- 19 (n) requirements and procedures for permit modification and amendment;
- 20 (o) procedures for tracking activities conducted under general permits;
- 21 (p) requirements and procedures for issuing a single operating permit authorizing emissions from
- 22 similar operations at multiple temporary locations, which permit may include conditions necessary to ensure
- 23 compliance with the requirements of this chapter at all authorized locations and a requirement that the owner or
- 24 operator notify the department in advance of each change in location;
- 25 (q) requirements and procedures for allowing changes within a permitted facility without requiring a
- 26 permit amendment if the changes are not prohibited under this chapter and do not exceed the emissions
- 27 allowable under the permit; and
- 28 (r) other requirements necessary for the department to obtain the authorization to administer an

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- 1 operating permit program under the provisions of Subchapter V of the federal Clean Air Act."
- 2
- 3 **Section 20.** Section 75-2-218, MCA, is amended to read:
- 4 **"75-2-218. Permits for operation -- application completeness -- action by department --**
- 5 **application shield -- review by board-department board.** (1) An application for an operating permit or
- 6 renewal is not considered filed until the department has determined that it is complete. An application is
- 7 complete if all fees required under 75-2-220 and all information and completed application forms required under
- 8 75-2-217 have been submitted. A complete application must contain all of the information required for the
- 9 department to begin processing the application. If the department fails to notify the applicant in writing within 60
- 10 days after submittal of an application that the application is incomplete and fails to list the reasons why the
- 11 application is considered incomplete, the application is considered filed on the date of the department's receipt
- 12 of the application. The department may request additional information after a completeness determination has
- 13 been made. The ~~board-department~~ shall adopt rules that contain criteria for use in determining both when an
- 14 application is complete and when additional information is required after a completeness determination has
- 15 been made.
- 16 (2) Except as provided in 75-1-208(4)(b) and subsection (3) of this section, the department shall,
- 17 consistent with the procedures established under 75-2-217, approve or disapprove a complete application for
- 18 an operating permit or renewal and shall issue or deny the permit or renewal within 18 months after the date of
- 19 filing. Failure of the department to act in a timely manner does not constitute approval or denial of the
- 20 application. This does not limit or abridge the right of any person to seek available judicial remedies to require
- 21 the department to act in a timely manner.
- 22 (3) The ~~board-department~~ may by rule provide for a transition schedule for both the submittal to the
- 23 department of initial applications for operating permits by existing sources and action by the department on
- 24 these initial permit applications. The ~~board-department~~ may require that one-third of all operating permit
- 25 applications required for existing sources be submitted within the first calendar year after the adoption of rules
- 26 implementing an operating permit program under 75-2-217.
- 27 (4) If an applicant submits a timely and complete application for an operating permit, the applicant's
- 28 failure to hold a valid operating permit is not a violation of 75-2-217. If an applicant submits a timely and

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1 complete application for an operating permit renewal, the expiration of the applicant's existing operating permit
2 is not a violation of 75-2-217. The applicant shall continue to be subject to the terms and conditions of the
3 expired operating permit until the operating permit is renewed and is subject to the application of 75-2-217. The
4 applicant is not entitled to the protection of this subsection if the delay in final action by the department on the
5 application results from the applicant's failure to submit in a timely manner information requested by the
6 department to process the application.

7 (5) Except as provided in subsection (8), if the department approves or denies an application for an
8 operating permit or the renewal, modification, or amendment of a permit under 75-2-217 and this section, any
9 person that participated in the public comment process required under 75-2-217(7) may request a hearing
10 before the ~~board~~ department board. The request for a hearing must be filed within 30 days after the department
11 renders its decision and must include an affidavit setting forth the grounds for the request. The contested case
12 provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing ~~before the~~
13 ~~board~~ department under this subsection.

14 (6) (a) Except as provided in subsection (8), the department's decision on any application is not final
15 until 30 days have elapsed from the date of the decision.

16 (b) Except as provided in subsection (8), the filing of a request for hearing does not stay the
17 department's decision. However, the ~~board~~ department board may order a stay upon receipt of a petition and a
18 finding, after notice and opportunity for an informal hearing, that:

19 (i) the person requesting the hearing is entitled to the relief demanded in the request for a hearing; or
20 (ii) continuation of the permit during the appeal would produce great or irreparable injury to the person
21 requesting the hearing.

22 (c) Upon granting a stay, the ~~board~~ department board may require a written undertaking to be given
23 by the party requesting the stay for the payment of costs and damages incurred by the permit applicant and its
24 employees if the ~~board~~ department board determines that the permit was properly issued. When requiring an
25 undertaking, the ~~board~~ department board shall use the same procedures and limitations as are provided in 27-
26 19-306(2) through (4) for undertakings on injunctions.

27 (7) The requirements of subsections (5) and (6) also apply to any action initiated by the department to
28 suspend, revoke, modify, or amend an operating permit issued under this section.

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1 (8) The denial by the department of an application under 75-2-217 and this section is not subject to
2 review by the ~~board~~ department board or judicial review if the basis for denial is the written objection of the
3 appropriate federal agency acting pursuant to the federal Clean Air Act, 42 U.S.C. 7401, et seq.

4 (9) Compliance with an operating permit granted or renewed under 75-2-217 and this section is
5 considered to be compliance with the requirements of this chapter only if the permit expressly includes those
6 requirements or an express determination that those requirements are not applicable. This subsection does not
7 apply to general permits provided for under 75-2-217."

8
9 **Section 21.** Section 75-2-219, MCA, is amended to read:

10 **"75-2-219. Permits for operation -- limitations.** Sections 75-2-217 and 75-2-218 may not be
11 construed to:

12 (1) affect the department's issuance of a permit for the construction, installation, alteration, or use of a
13 source of air pollutants pursuant to 75-2-211 or 75-2-215;

14 (2) restrict the ~~board's~~ department's authority to adopt regulations providing for a single air quality
15 permit system; or

16 (3) affect permits, allowances, phase II compliance schedules, or other acid rain provisions under
17 Subchapter IV of the federal Clean Air Act, 42 U.S.C. 7651, et seq."

18
19 **Section 22.** Section 75-2-220, MCA, is amended to read:

20 **"75-2-220. Fees -- special assessments -- late payment assessments -- credit.** (1) A person
21 required to obtain a permit or to register a facility pursuant to this chapter shall submit to the department fees
22 set ~~by the board~~ pursuant to 75-2-44475-2-112 that are sufficient to cover the reasonable costs, direct and
23 indirect, of developing and administering the permitting or registration requirements in this chapter, including:

24 (a) reviewing and acting upon a permit application or a registration or modifying, amending, or
25 updating a permit or registration;

26 (b) implementing and enforcing the terms and conditions of a permit issued pursuant to this chapter or
27 an administrative rule or other regulatory requirement adopted pursuant to this chapter. This does not include
28 any court costs or other costs associated with an enforcement action. If the permit is not issued, the department

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1 shall return this portion of the fee to the applicant.
2 (c) emissions and ambient monitoring;
3 (d) preparing generally applicable rules or guidance;
4 (e) modeling, analysis, and demonstrations;
5 (f) preparing inventories and tracking emissions;
6 (g) providing support to sources under the small business stationary source technical and
7 environmental compliance assistance program; and
8 (h) all other costs required to be recovered pursuant to Subchapter V of the federal Clean Air Act, 42
9 U.S.C. 7661, et seq.
10 (2) For a permit or registration fee based on emissions, the fee must be based on emissions of air
11 pollutants regulated under this chapter, including but not limited to volatile organic compounds, each air
12 pollutant regulated under section 7411 or 7412 of the federal Clean Air Act, 42 U.S.C. 7401, et seq., and each
13 air pollutant subject to a national primary ambient air quality standard.
14 (3) The ~~board-department~~ shall by rule provide for the annual review of all fees assessed for persons
15 holding an operating permit issued under 75-2-217 and 75-2-218 to ensure the collection of revenue sufficient
16 to cover the costs of administering the operating permit requirements of this chapter, as required by Subchapter
17 V of the federal Clean Air Act.
18 (4) In addition to the fees required under subsection (1), the ~~board-department~~ may order the
19 assessment of additional fees required to fund specific activities of the department that are directed at a
20 particular geographic area if the legislature authorizes the activities and appropriates funds for the activities,
21 including emissions or ambient monitoring, modeling analysis or demonstrations, and emissions inventories or
22 tracking. Additional assessments may be levied only on those sources that are within or are believed by the
23 department to be impacting the geographic area. Before the ~~board-department~~ may require the fees, it shall first
24 determine, after opportunity for hearing, that the activities to be funded are necessary for the administration or
25 implementation of this chapter, that the amount of the requested fees is appropriate, that the assessments
26 apportion the required funding in an equitable manner, and that the department has obtained the necessary
27 appropriation. The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4,
28 part 6, apply to a hearing before the ~~board-department~~ under this subsection.

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1 (5) (a) If the permitholder or registrant fails to pay in a timely manner a fee required under subsection
2 (1), in addition to the fee, the department may:
3 (i) impose a penalty not to exceed 50% of the fee, plus interest on the required fee computed as
4 provided in 15-1-216; or
5 (ii) revoke the permit or registration consistent with those procedures established under this chapter for
6 permit revocation.
7 (b) Within 1 year of revocation, the department may reissue the revoked permit or registration after
8 the permitholder or registrant has paid all outstanding fees required under subsections (1) and (4), including all
9 penalties and interest provided for under this subsection (5). In reissuing the revoked permit, the department
10 may modify the terms and conditions of the permit as necessary to account for changes in air quality occurring
11 since revocation.
12 (c) The ~~board-department~~ shall by rule provide for the implementation of this subsection (5), including
13 criteria for imposition of the sanctions described in this subsection (5).
14 (6) The ~~board-department~~ may by rule allow the reduction of a fee required under this section for an
15 operating permit or permit renewal to account for the financial resources of a category of small business
16 stationary sources.
17 (7) As a condition of the continuing validity of a permit issued by the department under this chapter
18 prior to October 1, 1993, the ~~board-department~~ may by rule require the permitholder to pay the fees under
19 subsections (1) and (4).
20 (8) For an existing source of air pollutants that is subject to Subchapter V of the federal Clean Air Act
21 and that is not required to hold an air quality permit from the department as of October 1, 1993, the ~~board~~
22 ~~department~~ may, as a condition of continued operation, require by rule that the owner or operator of the source
23 pay the fees under subsections (1) and (4).
24 (9) (a) The department shall give written notice of the fee to be assessed and the basis for the
25 department's fee assessment under this section to the owner or operator of the air pollutant source. The owner
26 or operator may appeal the department's fee assessment ~~to the board~~ to the board within 20 days after receipt
27 of the written notice.
28 (b) An appeal must be based upon the allegation that the fee assessment is erroneous or excessive.

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1 An appeal may not be based on the amount of the fee contained in the schedule adopted by the board
2 department.
3 (c) If any part of the fee assessment is not appealed, it must be paid to the department upon receipt
4 of the notice required in subsection (9)(a).
5 (d) The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4,
6 part 6, apply to a hearing before the board-department board under this subsection (9).
7 (10) The total of the fees charged to an applicant under subsections (1) and (4) of this section must be
8 reduced by the amount of any credit accruing to the applicant under 75-2-225. The department may not
9 increase fee assessments beyond legislative appropriation levels to adjust for any credit claimed under 75-2-
10 225. The credit applied under 75-2-225 may not limit the department's ability to collect fees sufficient to cover
11 the reasonable costs, both direct and indirect, of developing and administering the permitting and registration
12 requirements of this chapter."

13
14 **Section 23.** Section 75-2-221, MCA, is amended to read:

15 **"75-2-221. Deposit of air quality permitting and registration fees.** (1) All money collected by the
16 department pursuant to ~~75-2-444~~75-2-112 and 75-2-220 must be deposited in an account in the state special
17 revenue fund to be appropriated by the legislature to the department for the development and administration of
18 the permitting and registration requirements of this chapter.

19 (2) Upon request, the expenditure by the department of funds in this account may be audited by a
20 qualified auditor at the end of each fiscal year. The cost of the audit must be paid by the person requesting the
21 audit."

22
23 **Section 24.** Section 75-2-231, MCA, is amended to read:

24 **"75-2-231. Medical waste and hazardous waste incineration -- additional permit requirements.**

25 (1) Because of the potential emission of chlorinated dioxins, furans, heavy metals, and carcinogens as a result
26 of the incineration of medical waste and hazardous waste and the potential health risk these chemicals pose,
27 the board-department shall adopt rules establishing additional permit requirements for commercial medical
28 waste and commercial hazardous waste incinerators. For the purposes of this section, the term "commercial

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1 medical waste incinerator" does not include hospital or medical facility incinerators that primarily incinerate
2 medical waste generated onsite. The board-department shall adopt rules that:
3 (a) regulate the type and amount of plastic and other materials in the medical waste stream and
4 hazardous waste stream that may be a source of chlorine, in order to minimize the potential emission of
5 chlorinated dioxins, furans, and carcinogens;
6 (b) require commercial medical waste and commercial hazardous waste incinerators to achieve the
7 lowest achievable emission rate to prevent the public health risk from air emissions or ambient concentrations
8 from exceeding the negligible risk standard required by 75-2-215 and any applicable federal allowable intake
9 standards, as determined pursuant to subsection (3), for dioxins, furans, heavy metals, and other hazardous air
10 pollutants;
11 (c) implement the requirements of subsection (2), including establishing procedures and standards for
12 the collection of high-quality scientific information and for the submission of the information by the applicant;
13 (d) establish procedures for the monitoring, testing, and inspection of:
14 (i) the medical waste stream and hazardous waste stream, including heavy metals and possible
15 precursors to the formation of chlorinated dioxins, furans, and carcinogens;
16 (ii) combustion, including destruction and removal efficiencies; and
17 (iii) emissions, including continuous emission monitoring and air pollution control devices; and
18 (e) are necessary to implement the provisions of this section and to coordinate the requirements
19 under this section with the requirements contained in 75-2-211 and 75-2-215.
20 (2) A person who applies for an air quality permit or alteration pursuant to 75-2-211 and 75-2-215 for
21 a commercial medical waste incinerator or commercial hazardous waste incinerator shall provide, to the
22 satisfaction of the department, the following information:
23 (a) a dispersion model of emissions, using approved methods, and those studies that are necessary
24 to identify the potential community exposure;
25 (b) an analysis of the potential pathways for human exposure to air contaminants, particularly
26 chlorinated dioxins, furans, heavy metals, and other carcinogens, including the potential for inhalation,
27 ingestion, and physical contact by the affected communities; and
28 (c) a quantitative analysis of the estimated total possible human exposure to chlorinated dioxins,

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1 furans, heavy metals, and carcinogens for the affected communities.

2 (3) The department may not issue or alter an air quality permit pursuant to this chapter until the
3 department has determined, based upon an analysis of the information provided by the applicant pursuant to
4 subsection (2) and other necessary and relevant data, that the public health risk from air emissions or ambient
5 concentrations of chlorinated dioxins, furans, heavy metals, and other hazardous air pollutants will not exceed
6 the negligible risk standard required by 75-2-215 and any applicable federal standards for allowable intake, as
7 determined by the department after a review of established and relevant federal standards and guidelines.

8 (4) This section may not be construed in any way to:

9 (a) require the board-department to promulgate standards for the allowable intake of any substances
10 for which the federal government has not established standards;

11 (b) allow the board-department to promulgate standards for the allowable intake of any substances for
12 which the federal government has established standards that are more stringent than the federal standards; or

13 (c) limit or otherwise impair the duty of the department under 75-2-215 to determine that emissions
14 and ambient concentrations will constitute a negligible risk as required by 75-2-215(3)(d), including emissions
15 and ambient concentrations of dioxins, furans, heavy metals, and carcinogens, before issuing an air quality
16 permit pursuant to 75-2-211 and 75-2-215."

17
18 **Section 25.** Section 75-2-234, MCA, is amended to read:

19 **"75-2-234. Registration.** The board-department may adopt rules for the registration of certain classes
20 of sources of air contaminants in lieu of a permit application required under 75-2-211(2)."

21
22 **Section 26.** Section 75-2-301, MCA, is amended to read:

23 **"75-2-301. Local air pollution control programs -- consistency with state and federal
24 regulations -- procedure for public notice and comment required.** (1) After public hearing, a municipality or
25 county may establish and administer a local air pollution control program if the program is consistent with this
26 chapter and is approved by the board-department.

27 (2) If a local air pollution control program established by a county encompasses all or part of a
28 municipality, the county and each municipality shall approve the program in accordance with subsection (1).

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1 (3) (a) Except as provided in subsection (5), the board-department by order may approve a local air
2 pollution control program that:

3 (i) subject to subsection (4), provides by rule, ordinance, or local law for requirements compatible
4 with, more stringent than, or more extensive than those imposed by 75-2-203, 75-2-204, 75-2-211, 75-2-212,
5 75-2-215, 75-2-217 through 75-2-219, and 75-2-402 and rules adopted under these sections;

6 (ii) provides for the enforcement of requirements established under subsection (3)(a)(i) by appropriate
7 administrative and judicial processes; and

8 (iii) provides for administrative organization, staff, financial resources, and other resources necessary
9 to effectively and efficiently carry out the program. As part of meeting these requirements, a local air pollution
10 control program may administer the permit or registration fee provisions of 75-2-220. The permit or registration
11 fees collected by a local air pollution control program must be deposited in a county special revenue fund to be
12 used by the local air pollution control program for administration of local air pollution control program permitting
13 or registration activities.

14 (b) Board Department approval of a rule, ordinance, or local law that is more stringent than the
15 comparable state law is subject to the provisions of subsection (4).

16 (4) (a) A local air pollution control program may, subject to approval by the board-department, adopt
17 a rule, ordinance, or local law to implement this chapter that is more stringent than comparable state or federal
18 regulations or guidelines only if:

19 (i) a public hearing is held;

20 (ii) public comment is allowed; and

21 (iii) the board-department or the local air pollution control program makes a written finding after the
22 public hearing and comment period that is based on evidence in the record that the proposed local standard or
23 requirement:

24 (A) protects public health or the environment of the area;

25 (B) can mitigate harm to the public health or the environment; and

26 (C) is achievable with current technology.

27 (b) The written finding required under subsection (4)(a)(iii) must reference information and peer-
28 reviewed scientific studies contained in the record that form the basis for the board's department's or the local

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1 air pollution control program's conclusion. The written finding must also include information from the hearing
2 record regarding costs to the regulated community that are directly attributable to the proposed local standard
3 or requirement.

4 (c) (i) A person or entity affected by a rule, ordinance, or local law approved or adopted after January
5 1, 1996, and before May 1, 2001, that the person or entity believes is more stringent than comparable state or
6 federal regulations or guidelines may petition the board-department or the local air pollution control program to
7 review the rule, ordinance, or local law.

8 (ii) If the board-department or local air pollution control program determines that the rule, ordinance, or
9 local law is more stringent than state or federal regulations or guidelines, the board-department or local air
10 pollution control program shall either revise the rule, ordinance, or local law to conform to the state or federal
11 regulations or guidelines or follow the process provided in subsections (4)(a) and (4)(b) within a reasonable
12 period of time, not to exceed 6 months after receiving the petition.

13 (5) Except for those emergency powers provided for in 75-2-402, the board-department may not
14 delegate to a local air pollution control program the authority to control any air pollutant source that:

15 (a) requires the preparation of an environmental impact statement in accordance with Title 75,
16 chapter 1, part 2;

17 (b) is subject to regulation under the Montana Major Facility Siting Act, as provided in Title 75, chapter
18 20; or

19 (c) has the potential to emit 250 tons a year or more of any pollutant subject to regulation under this
20 chapter, including fugitive emissions, unless the authority to control the source was delegated to a local air
21 pollution control program prior to January 1, 1991.

22 (6) If the board-department finds that the location, character, or extent of particular concentrations of
23 population, air pollutant sources, or geographic, topographic, or meteorological considerations or any
24 combination of these makes impracticable the maintenance of appropriate levels of air quality without an
25 areawide air pollution control program, the board-department may determine the boundaries within which the
26 program is necessary and require it as the only acceptable alternative to direct state administration.

27 (7) If the board-department has reason to believe that any part of an air pollution control program in
28 force under this section is either inadequate to prevent and control air pollution in the jurisdiction to which the

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1 program relates or is being administered in a manner inconsistent with this chapter, the board-department shall,
2 on notice, conduct a hearing on the matter.

3 (8) If, after the hearing, the board-department determines that any part of the program is inadequate
4 to prevent and control air pollution in the jurisdiction to which it relates or that it is not accomplishing the
5 purposes of this chapter, it shall require that necessary corrective measures be taken within a reasonable time,
6 not to exceed 60 days.

7 (9) If the jurisdiction fails to take these measures within the time required, the department shall
8 administer within that jurisdiction all of the provisions of this chapter, including the terms contained in any
9 applicable board-department order, that are necessary to correct the deficiencies found by the board
10 department. The department's control program supersedes all municipal or county air pollution laws, rules,
11 ordinances, and requirements in the affected jurisdiction. The cost of the department's action is a charge on the
12 jurisdiction.

13 (10) If the board-department finds that the control of a particular air pollutant source because of its
14 complexity or magnitude is beyond the reasonable capability of the local jurisdiction or may be more efficiently
15 and economically performed at the state level, it may ~~direct the department to assume~~ and retain control over
16 that air pollutant source. A charge may not be assessed against the jurisdiction. Findings made under this
17 subsection may be either on the basis of the nature of the sources involved or on the basis of their relationship
18 to the size of the communities in which they are located.

19 (11) A jurisdiction in which the department administers all or part of its air pollution control program
20 under subsection (9) may, ~~with the approval of the board,~~ establish or resume an air pollution control program
21 that meets the requirements of subsection (3).

22 (12) A municipality or county may administer all or part of its air pollution control program in
23 cooperation with one or more municipalities or counties of this state or of other states.

24 (13) Local air pollution control programs established under this section shall provide procedures for
25 public notice, public hearing, public comment, and appeal for any proposed new or revised rules, ordinances, or
26 local laws adopted pursuant to this section. The procedures must comply with the following requirements:

27 (a) The local air pollution control program shall create and maintain a list of interested persons who
28 wish to be informed of actions related to rules, ordinances, or local laws adopted by the local air pollution

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- 1 control program.
- 2 (b) At least 30 days prior to the adoption, revision, or repeal of a rule, ordinance, or law, the local air
- 3 pollution control program shall give written notice of its intended action.
- 4 (c) The notice required under subsection (13)(b) must include:
- 5 (i) a statement of the terms or substance of the intended action or a description of the subjects and
- 6 issues affected by the intended action;
- 7 (ii) an explanation of the procedure for a person to be included on the list of interested persons
- 8 established pursuant to subsection (13)(a);
- 9 (iii) an explanation of the procedures and deadlines for presentation of oral or written comments
- 10 related to the intended action;
- 11 (iv) an explanation of the process for requesting a public hearing as provided in subsection (13)(f); and
- 12 (v) the rationale for the intended action. The rationale must:
- 13 (A) include an explanation of why the intended action is reasonably necessary to implement the goals
- 14 and purposes of the local air pollution control program;
- 15 (B) specifically address those intended actions for which there are no similar state or federal
- 16 regulations or guidelines; and
- 17 (C) be written in plain, easily understood language.
- 18 (d) For the purposes of subsection (13)(c)(v), a statement of authority to adopt a rule, ordinance, or
- 19 local law does not, standing alone, constitute a showing of reasonable necessity for the intended action.
- 20 (e) The local air pollution control program shall mail a copy of the proposed rule, ordinance, or local
- 21 law to all interested persons on the list established pursuant to subsection (13)(a) who have made timely
- 22 requests to be included on the list.
- 23 (f) If at least 10 of the persons who will be directly affected by the proposed rule, ordinance, or local
- 24 law request a public hearing, the local air pollution control program shall hold a hearing to hear comments from
- 25 the public on the intended action.
- 26 (g) The local air pollution control program shall prepare a written response to all comments submitted
- 27 in writing or presented at the public hearing for consideration prior to adoption, revision, or repeal of the
- 28 proposed rule, ordinance, or local law.

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- 1 (h) A person who submits a written comment on a proposed action or who attends a public hearing in
- 2 regard to a proposed action must be informed of the final action."
- 3
- 4 **Section 27.** Section 75-2-302, MCA, is amended to read:
- 5 **"75-2-302. State and federal aid.** (1) Any local air pollution control program meeting the
- 6 requirements of this chapter and rules made pursuant thereto shall be eligible for state aid in
- 7 an amount up to 30% of the locally funded annual operating cost thereof of the program.
- 8 (2) Federal aid granted to the state for developing or maintaining a local air pollution control program
- 9 that is subsequently granted to a local program is not considered state aid.
- 10 (3) Subdivisions of the state may make application for, receive, administer, and expend any federal
- 11 aid for the control of air pollution or the development and administration of programs related to air pollution
- 12 control, provided the program is currently approved by the board department under 75-2-301."
- 13
- 14 **Section 35.** Section 75-2-401, MCA, is amended to read:
- 15 ~~"75-2-401. Enforcement—notice—order for corrective action—administrative penalty.—(1)~~
- 16 ~~When the department believes that a violation of this chapter, a rule adopted under this chapter, or a condition~~
- 17 ~~or limitation imposed by a permit issued pursuant to this chapter has occurred, it may cause written notice to be~~
- 18 ~~served personally or by certified mail on the alleged violator or the violator's agent. The notice must specify the~~
- 19 ~~provision of this chapter, the rule, or the permit condition or limitation alleged to be violated and the facts~~
- 20 ~~alleged to constitute a violation. The notice may include an order to take necessary corrective action within a~~
- 21 ~~reasonable period of time stated in the order or an order to pay an administrative penalty, or both. The order~~
- 22 ~~becomes final unless, within 30 days after the notice is received, the person named requests in writing a~~
- 23 ~~hearing before the board department. On receipt of the request, the board department shall schedule a hearing.~~
- 24 ~~(2)—If, after a hearing held under subsection (1), the board department finds that violations have~~
- 25 ~~occurred, it shall issue an appropriate order for the prevention, abatement, or control of the emissions involved~~
- 26 ~~or for the taking of other corrective action or assess an administrative penalty, or both. As appropriate, an order~~
- 27 ~~issued as part of a notice or after a hearing may prescribe the date by which the violation must cease; time~~
- 28 ~~limits for particular action in preventing, abating, or controlling the emissions; or the date by which the~~

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1 administrative penalty must be paid. If, after a hearing on an order contained in a notice, the board department
2 finds that a violation has not occurred or is not occurring, it shall rescind the order.
3 (3) ~~(a) An action initiated under this section may include an administrative civil penalty of not more~~
4 ~~than \$10,000 for each day of each violation, not to exceed a total of \$80,000. If an order issued by the board~~
5 ~~department under this section requires the payment of an administrative civil penalty, the board department~~
6 ~~shall state findings and conclusions describing the basis for its penalty assessment.~~
7 (b) Administrative penalties collected under this section must be deposited in the alternative energy
8 revolving loan account established in 75-25-101.
9 (c) Penalties imposed by an administrative order under this section may not be assessed for any day
10 of violation that occurred more than 2 years prior to the issuance of the initial notice and order by the
11 department under subsection (1).
12 (d) In determining the amount of penalty to be assessed for an alleged violation under this section,
13 the department or board, as appropriate, shall consider the penalty factors in 75-1-1001.
14 (e) The department may bring a judicial action to enforce a final administrative order issued pursuant
15 to this section. The action must be filed in the district court of the county in which the violation occurred or, if
16 mutually agreed on by the parties in the action, in the district court of the first judicial district, Lewis and Clark
17 County.
18 (4) The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4,
19 part 6, apply to a hearing conducted under this section.
20 (5) Instead of issuing the order provided for in subsection (1), the department may either:
21 (a) require that the alleged violators appear before the board department for a hearing at a time and
22 place specified in the notice and answer the charges complained of; or
23 (b) initiate action under 75-2-412 or 75-2-413.
24 (6) This chapter does not prevent the board or department from making efforts to obtain voluntary
25 compliance through warning, conference, or any other appropriate means.
26 (7) In connection with a hearing held under this section, the board department may and on application
27 by a party shall compel the attendance of witnesses and the production of evidence on behalf of the parties."

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1 **Section 28.** Section 75-2-402, MCA, is amended to read:
2 ~~"75-2-402. Emergency procedure. (1) Any other law to the contrary notwithstanding, if the~~
3 ~~department finds that a generalized condition of air pollution exists and that it creates an emergency requiring~~
4 ~~immediate action to protect human health or safety, the department shall order persons causing or contributing~~
5 ~~to the air pollution to immediately reduce or discontinue the emission of air contaminants. Upon issuance of this~~
6 ~~order, the department shall fix a place and time within 24 hours for a hearing to be held before the board~~
7 ~~department. Within 24 hours after the start of the hearing and without adjournment, the board department shall~~
8 ~~confirm, modify, or set aside the order of the department.~~
9 (2) Except as provided in subsection (1), if the department finds that emissions from the operation of
10 one or more air contaminant sources are causing imminent danger to human health or safety, it may order the
11 person responsible for the operation in question to reduce or discontinue emissions immediately, without regard
12 for 75-2-401. In this event, the requirements for hearing and confirmation, modification, or setting aside of
13 orders as provided in subsection (1) apply.
14 (3) This section does not limit any power that the governor or any other officer may have to declare an
15 emergency and act on the basis of this declaration, whether the power is conferred by statute or the constitution
16 or is inherent to the office."
17
18 **Section 29.** Section 75-2-411, MCA, is amended to read:
19 ~~"75-2-411. Judicial review. (1) A person aggrieved by an order of the board department or local~~
20 ~~control authority may apply for rehearing upon one or more of the following grounds and upon no other~~
21 ~~grounds:~~
22 (a) the board department or local control authority acted without or in excess of its powers;
23 (b) the order was procured by fraud;
24 (c) the order is contrary to the evidence;
25 (d) the applicant has discovered new evidence, material to the applicant, that the applicant could not
26 with reasonable diligence have discovered and produced at the hearing; or
27 (e) competent evidence was excluded to the prejudice of the applicant.
28 (2) The petition must be in a form and filed at a time that the board department prescribes.

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1 (3)—(a)—Within 30 days after the application for rehearing is denied or, if the application is granted,
2 within 30 days after the decision on the rehearing, an aggrieved party may appeal to the district court of the
3 judicial district of the state that is the situs of property affected by the order.
4 (b)—The appeal must be taken by serving a written notice of appeal upon the presiding officer of the
5 board ~~department~~. Service must be made by the delivery of a copy of the notice to the presiding officer
6 ~~department~~ and by filing the original with the clerk of the court to which the appeal is taken. Immediately after
7 service upon the board, the board ~~department~~ shall certify to the district court the entire record and
8 proceedings, including all testimony and evidence taken by the board ~~department~~. Immediately upon receiving
9 the certified record, the district court shall fix a day for filing of briefs and hearing arguments on the cause and
10 shall cause a notice of the dates to be served upon the board ~~department~~ and the appellant.
11 (c)—The court shall hear and decide the cause upon the record of the board ~~department~~. The court
12 shall determine whether or not the board ~~department~~ regularly pursued its authority, whether or not the findings
13 of the board ~~department~~ were supported by substantial competent evidence, and whether or not the board
14 ~~department~~ made errors of law prejudicial to the appellant.
15 (4)—Either the board ~~department~~ or the person aggrieved may appeal from the decision of the district
16 court to the supreme court. The proceedings before the supreme court must be limited to a review of the record
17 of the hearing before the board ~~department~~ and of the district court's review of that record."

19 **Section 30.** Section 75-2-421, MCA, is amended to read:

20 "75-2-421. ~~Persons subject to noncompliance penalties -- exemptions.~~ (1) Except as provided in
21 subsection (2), the department may assess and collect a noncompliance penalty from any person who owns or
22 operates:

23 (a)—a stationary source (other than a primary nonferrous smelter that has received a nonferrous
24 smelter order under 42 U.S.C. 7419) that is not in compliance with any emission limitation specified in an order
25 of the board ~~department~~, emission standard, or compliance schedule under the state implementation plan
26 approved by the federal environmental protection agency;

27 (b)—a stationary source that is not in compliance with an emission limitation, emission standard,
28 standard of performance, or other requirement under this chapter or 42 U.S.C. 7411, 7412, 7477, or 7603;

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1 (c)—a stationary source that is not in compliance with any other requirement under this chapter or any
2 requirement of Subchapter V of the federal Clean Air Act, 42 U.S.C. 7661, et seq.; or
3 (d)—any source referred to in subsections (1)(a), (1)(b), or (1)(c) that has been granted an exemption,
4 extension, or suspension under subsection (2) or that is covered by a compliance order, or a primary
5 nonferrous smelter that has received a primary nonferrous smelter order under 42 U.S.C. 7419, if that source is
6 not in compliance with any interim emission control requirement or schedule of compliance under the extension,
7 order, or suspension.
8 (2)—Notwithstanding the requirements of subsection (1), the department may, after notice and
9 opportunity for a public hearing, exempt any source from the requirements of 75-2-421 through 75-2-429 with
10 respect to a particular instance of noncompliance that:
11 (a)—the department finds is de minimis in nature and in duration;
12 (b)—is caused by conditions beyond the reasonable control of the source and is of no demonstrable
13 advantage to the source; or
14 (c)—is exempt under 42 U.S.C. 7420(a)(2)(B) of the federal Clean Air Act.
15 (3)—Any person who is jointly or severally adversely affected by the department's decision may
16 request, within 15 days after the department renders its decision, upon affidavit setting forth the grounds for it, a
17 hearing before the board ~~department~~. A hearing must be held under the provisions of the Montana
18 Administrative Procedure Act, Title 2, chapter 4, part 6."

20 **Section 31.** Section 75-2-422, MCA, is amended to read:

21 "75-2-422. **Amount of noncompliance penalty -- late charge.** (1) The amount of the penalty which
22 ~~that shall be is~~ assessed and collected with respect to any source under 75-2-421 through 75-2-429 shall must
23 be equal to:

24 (a) the amount determined in accordance with the rules adopted by the board ~~department~~, which shall
25 must be no less than the economic value which ~~that~~ a delay in compliance after July 1, 1979, may have for the
26 owner of such ~~the~~ source, including the quarterly equivalent of the capital costs of compliance and debt service
27 over a normal amortization period not to exceed 10 years, operation and maintenance costs foregone as a
28 result of noncompliance, and any additional economic value which ~~such a that the~~ delay may have for the

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- 1 owner or operator of such source; minus
- 2 (b) the amount of any expenditure made by the owner or operator of that source during any ~~such-the~~
- 3 quarter for the purpose of bringing that source into and maintaining compliance with ~~such-the~~ requirement, to
- 4 the extent that ~~such-the~~ expenditures have not been taken into account in the calculation of the penalty under
- 5 subsection (1)(a).
- 6 (2) To the extent that any expenditure under subsection (1)(b) made during any quarter is not
- 7 subtracted for ~~such-the~~ quarter from the costs under subsection (1)(a), ~~such-the~~ expenditure may be subtracted
- 8 for any subsequent quarter from ~~such-the~~ costs. In no event may the amount paid be less than the quarterly
- 9 payment minus the amount attributed to actual cost of construction.
- 10 (3) If the owner or operator of any stationary source to whom notice is issued under 75-2-425 does
- 11 not submit a timely petition under 75-2-425(2)(b) or submits a petition which ~~that~~ is denied and if the owner or
- 12 operator fails to submit a calculation of the penalty assessment, a schedule for payment, and the information
- 13 necessary for independent verification thereof, the department may enter into a contract with any person who
- 14 has no financial interest in the matter to assist in determining the amount of the penalty assessment or payment
- 15 schedule with respect to ~~such-the~~ source. The cost of carrying out ~~such-the~~ contract may be added to the
- 16 penalty to be assessed against the owner or operator of ~~such-the~~ source.
- 17 (4) Any person who fails to pay the amount of any penalty with respect to any source under 75-2-421
- 18 through 75-2-429 on a timely basis shall ~~be required to pay~~ in addition a quarterly nonpayment penalty for each
- 19 quarter during which ~~such-the~~ failure to pay persists. ~~Such-The~~ nonpayment penalty shall ~~be-is~~ equal to 20% of
- 20 the aggregate amount of ~~such-the~~ person's penalties and nonpayment penalties with respect to ~~such-the~~ source
- 21 which ~~that~~ are unpaid as of the beginning of ~~such-the~~ quarter."

23 **Section 32.** ~~Section 75-2-425, MCA, is amended to read:~~

24 ~~"75-2-425.—Notice of noncompliance—challenge. (1) The department shall give a brief but~~

25 ~~reasonably specific notice of noncompliance to each person who owns or operates a source subject to 75-2-~~

26 ~~424(1) which ~~that~~ is not in compliance as provided in that subsection, within 30 days after the department has~~

27 ~~discovered the noncompliance.~~

28 ~~(2)—Each person to whom notice has been given pursuant to subsection (1) shall:~~

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- 1 ~~(a)—calculate the amount of penalty owed (determined in accordance with 75-2-422(1)) and the~~
- 2 ~~schedule of payments (determined in accordance with 75-2-423) for each source and, within 45 days after~~
- 3 ~~issuance of the notice of noncompliance, submit that calculation and proposed schedule, together with the~~
- 4 ~~information necessary for an independent verification thereof, to the department; or~~
- 5 ~~(b)—submit to the board ~~department~~ a petition within 45 days after the issuance of such ~~the~~ notice,~~
- 6 ~~challenging such ~~the~~ notice of noncompliance or alleging entitlement to an exemption under 75-2-421(2) with~~
- 7 ~~respect to a particular source.~~
- 8 ~~(3)—Each person to whom notice of noncompliance is given shall pay the department the amount~~
- 9 ~~determined under 75-2-422 as the appropriate penalty unless there has been a final determination granting a~~
- 10 ~~petition filed pursuant to subsection (2)(b)."~~
- 11
- 12 **Section 33.** ~~Section 75-2-426, MCA, is amended to read:~~
- 13 ~~"75-2-426.—Hearing on challenge. (1) The board ~~department~~ shall provide a hearing on the record~~
- 14 ~~and make a decision (including findings of fact and conclusions of law) not later than 90 days after the receipt of~~
- 15 ~~any petition under 75-2-425(2)(b) with respect to such ~~the~~ source.~~
- 16 ~~(2)—If the petition is denied, the petitioner shall submit the material required by 75-2-425(2)(a) to the~~
- 17 ~~department within 45 days of the date of decision."~~

19 **Section 34.** Section 75-2-428, MCA, is amended to read:

20 **"75-2-428. Effect of new standards on noncompliance penalty.** In the case of any emission

21 limitation, emission standard, or other requirement approved or adopted by the ~~board ~~department~~~~ under this

22 chapter after July 1, 1979, and approved by the federal environmental protection agency as an amendment to

23 the state implementation plan, which is more stringent than the emission limitation or requirement for the source

24 in effect prior to such approval or promulgation, if any, or where there was no emission limitation, emission

25 standard, or other requirement approved or adopted before July 1, 1979, the date for imposition of the

26 noncompliance penalty under 75-2-421 through 75-2-429 shall be the date on which the source is required to

27 be in full compliance with such emission limitation, emission standard, or other requirement or 3 years after the

28 approval or promulgation of such emission limitation or requirement, whichever is sooner."

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1
2 **Section 35.** Section 75-2-515, MCA, is amended to read:
3 **"75-2-515. — Administrative enforcement.** (1) The department may deny, suspend, or revoke the
4 accreditation of a person that:
5 (a) fraudulently or deceptively obtains or attempts to obtain accreditation;
6 (b) fails to meet the qualifications for accreditation or fails to comply with the requirements of this part;
7 a rule adopted under this part, or a permit or order issued under this part; or
8 (c) fails to meet an applicable federal or state standard for asbestos projects.
9 (2) When the department believes that a violation of this part, a rule adopted under this part, or a
10 permit or order issued under this part has occurred, it may serve written notice of the violation personally or by
11 certified mail on the alleged violator or the violator's agent. The notice must specify the provision of this part or
12 the rule, permit, or order alleged to be violated and the facts alleged to constitute a violation. The notice may
13 include an order to take necessary corrective action within a reasonable period of time stated in the order, an
14 order to pay an administrative civil penalty, or both. An order becomes final unless, within 30 days after the
15 order is received, the person that has been named requests, in writing, a hearing before the board department.
16 (3) On receipt of a hearing request, the board department shall schedule a hearing. The contested
17 case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to any hearing
18 conducted under this section. If, after a hearing, the board department finds that a violation has not occurred or
19 is not occurring, it shall rescind the order.
20 (4) (a) An action initiated under this section may include an administrative civil penalty of not more
21 than \$10,000 for each day of each violation, not to exceed a total of \$80,000. Any order issued by the
22 department under this section requiring payment of an administrative civil penalty must specify the basis for the
23 penalty assessment.
24 (b) A penalty may not be assessed under this section for any day of violation that occurred more than
25 3 years prior to the department issuing the order requiring payment of the penalty.
26 (c) In determining the amount of a penalty assessed to a person under this section, the department
27 shall consider the penalty factors in 75-1-1001.
28 (5) In addition to or instead of issuing an order under subsection (2), the department may:

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1 (a) ~~require the alleged violator to appear before the board department for a hearing at a time and~~
2 ~~place specified in the notice of hearing to answer the charges complained of; or~~
3 (b) ~~initiate action under 75-2-514.~~
4
5 **Section 36.** Section 75-5-103, MCA, is amended to read:
6 **"75-5-103. (Temporary) Definitions.** Unless the context requires otherwise, in this chapter, the
7 following definitions apply:
8 (1) "Associated supporting infrastructure" means:
9 (a) electric transmission and distribution facilities;
10 (b) pipeline facilities;
11 (c) aboveground ponds and reservoirs and underground storage reservoirs;
12 (d) rail transportation;
13 (e) aqueducts and diversion dams;
14 (f) devices or equipment associated with the delivery of an energy form or product produced at an
15 energy development project; or
16 (g) other supporting infrastructure, as defined by board department rule, that is necessary for an
17 energy development project.
18 (2) (a) "Base numeric nutrient standards" means numeric water quality criteria for nutrients in surface
19 water that are adopted to protect the designated uses of a surface water body.
20 (b) The term does not include numeric water quality standards for nitrate, nitrate plus nitrite, or nitrite
21 that are adopted to protect human health.
22 (3) ~~"Board" means the board of environmental review provided for in 2-15-3502.~~
23 (3) "Board" means the board of environmental review provided for in 2-15-3502.
24 (4)(3)(4) "Contamination" means impairment of the quality of state waters by sewage, industrial
25 wastes, or other wastes, creating a hazard to human health.
26 (5)(4)(5) "Council" means the water pollution control advisory council provided for in 2-15-2107.
27 (6)(5)(6) (a) "Currently available data" means data that is readily available to the department at the
28 time a decision is made, including information supporting its previous lists of water bodies that are threatened

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1 or impaired.

2 (b) The term does not mean new data to be obtained as a result of department efforts.

3 ~~(7)(6)(7)~~ "Degradation" means a change in water quality that lowers the quality of high-quality waters
4 for a parameter. The term does not include those changes in water quality determined to be nonsignificant
5 pursuant to 75-5-301(5)(c).

6 ~~(8)(7)(8)~~ "Department" means the department of environmental quality provided for in 2-15-3501.

7 ~~(9)(8)(9)~~ "Disposal system" means a system for disposing of sewage, industrial, or other wastes and
8 includes sewage systems and treatment works.

9 ~~(10)(9)(10)~~ "Effluent standard" means a restriction or prohibition on quantities, rates, and
10 concentrations of chemical, physical, biological, and other constituents that are discharged into state waters.

11 ~~(11)(10)(11)~~ (a) "Energy development project" means each plant, unit, or other development and
12 associated developments, including any associated supporting infrastructure, designed for or capable of:

13 (i) generating electricity;

14 (ii) producing gas derived from coal;

15 (iii) producing liquid hydrocarbon products;

16 (iv) refining crude oil or natural gas;

17 (v) producing alcohol to be blended for ethanol-blended gasoline and that are eligible for a tax

18 incentive pursuant to Title 15, chapter 70, part 5;

19 (vi) producing biodiesel and that are eligible for a tax incentive for the production of biodiesel pursuant
20 to 15-32-701; or

21 (vii) transmitting electricity through an electric transmission line with a design capacity of equal to or
22 greater than 50 kilovolts.

23 (b) The term does not include a nuclear facility as defined in 75-20-1202.

24 ~~(12)(11)(12)~~ "Existing uses" means those uses actually attained in state waters on or after July 1,
25 1971, whether or not those uses are included in the water quality standards.

26 ~~(13)(12)(13)~~ "High-quality waters" means all state waters, except:

27 (a) ground water classified as of January 1, 1995, within the "III" or "IV" classifications established by
28 the board's department's classification rules; and

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1 (b) surface waters that:

2 (i) are not capable of supporting any one of the designated uses for their classification; or

3 (ii) have zero flow or surface expression for more than 270 days during most years.

4 ~~(14)(13)(14)~~ "Impaired water body" means a water body or stream segment for which sufficient
5 credible data shows that the water body or stream segment is failing to achieve compliance with applicable
6 water quality standards.

7 ~~(15)(14)(15)~~ "Industrial waste" means a waste substance from the process of business or industry or
8 from the development of any natural resource, together with any sewage that may be present.

9 ~~(16)(15)(16)~~ "Interested person" means a person who has a real property interest, a water right, or an
10 economic interest that is or may be directly and adversely affected by the department's preliminary decision
11 regarding degradation of state waters, pursuant to 75-5-303. The term includes a person who has requested
12 authorization to degrade high-quality waters.

13 ~~(17)(16)(17)~~ "Load allocation" means the portion of a receiving water's loading capacity that is
14 allocated to one of its existing or future nonpoint sources or to natural background sources.

15 ~~(18)(17)(18)~~ "Loading capacity" means the mass of a pollutant that a water body can assimilate without
16 a violation of water quality standards. For pollutants that cannot be measured in terms of mass, it means the
17 maximum change that can occur from the best practicable condition in a surface water without causing a
18 violation of the surface water quality standards.

19 ~~(19)(18)(19)~~ "Local department of health" means the staff, including health officers, employed by a
20 county, city, city-county, or district board of health.

21 ~~(20)(19)(20)~~ "Metal parameters" includes but is not limited to aluminum, antimony, arsenic, beryllium,
22 barium, cadmium, chromium, copper, fluoride, iron, lead, manganese, mercury, nickel, selenium, silver,
23 thallium, and zinc.

24 ~~(21)(20)(21)~~ "Mixing zone" means an area established in a permit or final decision on nondegradation
25 issued by the department where water quality standards may be exceeded, subject to conditions that are
26 imposed by the department and that are consistent with the rules adopted by the board department.

27 ~~(22)(21)(22)~~ "Nutrient standards variance" means numeric water quality criteria for nutrients based on
28 a determination that base numeric nutrient standards cannot be achieved because of economic impacts or

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1 because of the limits of technology. The term includes individual, general, and alternative nutrient standards
2 variances in accordance with 75-5-313.
3 ~~(23)(22)(23)~~ "Nutrient work group" means an advisory work group, convened by the department,
4 representing publicly owned and privately owned point sources of pollution, nonpoint sources of pollution, and
5 other interested parties that will advise the department on the base numeric nutrient standards, the
6 development of nutrient standards variances, and the implementation of those standards and variances
7 together with associated economic impacts.
8 ~~(24)(23)(24)~~ "Other wastes" means garbage, municipal refuse, decayed wood, sawdust, shavings,
9 bark, lime, sand, ashes, offal, night soil, oil, grease, tar, heat, chemicals, dead animals, sediment, wrecked or
10 discarded equipment, radioactive materials, solid waste, and all other substances that may pollute state waters.
11 ~~(25)(24)(25)~~ "Outstanding resource waters" means:
12 (a) state surface waters located wholly within the boundaries of areas designated as national parks or
13 national wilderness areas as of October 1, 1995; or
14 (b) other surface waters or ground waters classified by the ~~board~~department under the provisions of
15 75-5-316 and approved by the legislature.
16 ~~(26)(25)(26)~~ "Owner or operator" means a person who owns, leases, operates, controls, or supervises
17 a point source.
18 ~~(27)(26)(27)~~ "Parameter" means a physical, biological, or chemical property of state water when a
19 value of that property affects the quality of the state water.
20 ~~(28)(27)(28)~~ "Person" means the state, a political subdivision of the state, institution, firm, corporation,
21 partnership, individual, or other entity and includes persons resident in Canada.
22 ~~(29)(28)(29)~~ "Point source" means a discernible, confined, and discrete conveyance, including but not
23 limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, or vessel or
24 other floating craft, from which pollutants are or may be discharged.
25 ~~(30)(29)(30)~~ (a) "Pollution" means:
26 (i) contamination or other alteration of the physical, chemical, or biological properties of state waters
27 that exceeds that permitted by Montana water quality standards, including but not limited to standards relating
28 to change in temperature, taste, color, turbidity, or odor; or

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1 (ii) the discharge, seepage, drainage, infiltration, or flow of liquid, gaseous, solid, radioactive, or other
2 substance into state water that will or is likely to create a nuisance or render the waters harmful, detrimental, or
3 injurious to public health, recreation, safety, or welfare, to livestock, or to wild animals, birds, fish, or other
4 wildlife.
5 (b) The term does not include:
6 (i) a discharge, seepage, drainage, infiltration, or flow that is authorized under the pollution discharge
7 permit rules adopted by the ~~board~~department under this chapter;
8 (ii) activities conducted under this chapter that comply with the conditions imposed by the department
9 in short-term authorizations pursuant to 75-5-308;
10 (iii) contamination of ground water within the boundaries of an underground mine using in situ coal
11 gasification and operating in accordance with a permit issued under 82-4-221.
12 (c) Contamination referred to in subsection ~~(30)(b)(iii)~~~~(29)(b)(iii)~~~~(30)(b)(iii)~~ does not require a mixing
13 zone.
14 ~~(31)(30)(31)~~ "Sewage" means water-carried waste products from residences, public buildings,
15 institutions, or other buildings, including discharge from human beings or animals, together with ground water
16 infiltration and surface water present.
17 ~~(32)(31)(32)~~ "Sewage system" means a device for collecting or conducting sewage, industrial wastes,
18 or other wastes to an ultimate disposal point.
19 ~~(33)(32)(33)~~ "Standard of performance" means a standard adopted by the ~~board~~department for the
20 control of the discharge of pollutants that reflects the greatest degree of effluent reduction achievable through
21 application of the best available demonstrated control technology, processes, operating methods, or other
22 alternatives, including, when practicable, a standard permitting no discharge of pollutants.
23 ~~(34)(33)(34)~~ (a) "State waters" means a body of water, irrigation system, or drainage system, either
24 surface or underground.
25 (b) The term does not apply to:
26 (i) ponds or lagoons used solely for treating, transporting, or impounding pollutants; or
27 (ii) irrigation waters or land application disposal waters when the waters are used up within the
28 irrigation or land application disposal system and the waters are not returned to state waters.

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1 ~~(35)(34)(35)~~ "Sufficient credible data" means chemical, physical, or biological monitoring data, alone or
2 in combination with narrative information, that supports a finding as to whether a water body is achieving
3 compliance with applicable water quality standards.
4 ~~(36)(35)(36)~~ "Threatened water body" means a water body or stream segment for which sufficient
5 credible data and calculated increases in loads show that the water body or stream segment is fully supporting
6 its designated uses but threatened for a particular designated use because of:
7 (a) proposed sources that are not subject to pollution prevention or control actions required by a
8 discharge permit, the nondegradation provisions, or reasonable land, soil, and water conservation practices; or
9 (b) documented adverse pollution trends.
10 ~~(37)(36)(37)~~ "Total maximum daily load" or "TMDL" means the sum of the individual waste load
11 allocations for point sources and load allocations for both nonpoint sources and natural background sources
12 established at a level necessary to achieve compliance with applicable surface water quality standards.
13 ~~(38)(37)(38)~~ "Treatment works" means works, including sewage lagoons, installed for treating or
14 holding sewage, industrial wastes, or other wastes.
15 ~~(39)(38)(39)~~ "Waste load allocation" means the portion of a receiving water's loading capacity that is
16 allocated to one of its existing or future point sources.
17 ~~(40)(39)(40)~~ "Water quality protection practices" means those activities, prohibitions, maintenance
18 procedures, or other management practices applied to point and nonpoint sources designed to protect,
19 maintain, and improve the quality of state waters. Water quality protection practices include but are not limited
20 to treatment requirements, standards of performance, effluent standards, and operating procedures and
21 practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from material storage.
22 ~~(41)(40)(41)~~ "Water well" means an excavation that is drilled, cored, bored, washed, driven, dug,
23 jetted, or otherwise constructed and intended for the location, diversion, artificial recharge, or acquisition of
24 ground water.
25 ~~(42)(41)(42)~~ "Watershed advisory group" means a group of individuals who wish to participate in an
26 advisory capacity in revising and reprioritizing the list of water bodies developed under 75-5-702 and in the
27 development of TMDLs under 75-5-703, including those groups or individuals requested by the department to
28 participate in an advisory capacity as provided in 75-5-704.

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Drafter: Joe Kolman, 406-444-3747

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1 **75-5-103. (Effective on occurrence of contingency) Definitions.** Unless the context requires
2 otherwise, in this chapter, the following definitions apply:
3 (1) "Associated supporting infrastructure" means:
4 (a) electric transmission and distribution facilities;
5 (b) pipeline facilities;
6 (c) aboveground ponds and reservoirs and underground storage reservoirs;
7 (d) rail transportation;
8 (e) aqueducts and diversion dams;
9 (f) devices or equipment associated with the delivery of an energy form or product produced at an
10 energy development project; or
11 (g) other supporting infrastructure, as defined by board department rule, that is necessary for an
12 energy development project.
13 (2) (a) "Base numeric nutrient standards" means numeric water quality criteria for nutrients in surface
14 water that are adopted to protect the designated uses of a surface water body.
15 (b) The term does not include numeric water quality standards for nitrate, nitrate plus nitrite, or nitrite
16 that are adopted to protect human health.
17 ~~(3) "Board" means the board of environmental review provided for in 2-15-3502.~~
18 ~~(3) "Board" means the board of environmental review provided for in 2-15-3502.~~
19 ~~(4)(3)(4)~~ "Contamination" means impairment of the quality of state waters by sewage, industrial
20 wastes, or other wastes, creating a hazard to human health.
21 ~~(5)(4)(5)~~ "Council" means the water pollution control advisory council provided for in 2-15-2107.
22 ~~(6)(5)(6)~~ (a) "Currently available data" means data that is readily available to the department at the
23 time a decision is made, including information supporting its previous lists of water bodies that are threatened
24 or impaired.
25 (b) The term does not mean new data to be obtained as a result of department efforts.
26 ~~(7)(6)(7)~~ "Degradation" means a change in water quality that lowers the quality of high-quality waters
27 for a parameter. The term does not include those changes in water quality determined to be nonsignificant
28 pursuant to 75-5-301(5)(c).

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1 ~~(8)(7)(8)~~ "Department" means the department of environmental quality provided for in 2-15-3501.
2 ~~(9)(8)(9)~~ "Disposal system" means a system for disposing of sewage, industrial, or other wastes and
3 includes sewage systems and treatment works.
4 ~~(40)(9)(10)~~ "Effluent standard" means a restriction or prohibition on quantities, rates, and
5 concentrations of chemical, physical, biological, and other constituents that are discharged into state waters.
6 ~~(44)(10)(11)~~ (a) "Energy development project" means each plant, unit, or other development and
7 associated developments, including any associated supporting infrastructure, designed for or capable of:
8 (i) generating electricity;
9 (ii) producing gas derived from coal;
10 (iii) producing liquid hydrocarbon products;
11 (iv) refining crude oil or natural gas;
12 (v) producing alcohol to be blended for ethanol-blended gasoline and that are eligible for a tax
13 incentive pursuant to Title 15, chapter 70, part 5;
14 (vi) producing biodiesel and that are eligible for a tax incentive for the production of biodiesel pursuant
15 to 15-32-701; or
16 (vii) transmitting electricity through an electric transmission line with a design capacity of equal to or
17 greater than 50 kilovolts.
18 (b) The term does not include a nuclear facility as defined in 75-20-1202.
19 ~~(42)(11)(12)~~ "Existing uses" means those uses actually attained in state waters on or after July 1,
20 1971, whether or not those uses are included in the water quality standards.
21 ~~(43)(12)(13)~~ "High-quality waters" means all state waters, except:
22 (a) ground water classified as of January 1, 1995, within the "III" or "IV" classifications established by
23 the board's department's classification rules; and
24 (b) surface waters that:
25 (i) are not capable of supporting any one of the designated uses for their classification; or
26 (ii) have zero flow or surface expression for more than 270 days during most years.
27 ~~(44)(13)(14)~~ "Impaired water body" means a water body or stream segment for which sufficient
28 credible data shows that the water body or stream segment is failing to achieve compliance with applicable

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1 water quality standards.
2 ~~(45)(14)(15)~~ "Industrial waste" means a waste substance from the process of business or industry or
3 from the development of any natural resource, together with any sewage that may be present.
4 ~~(46)(15)(16)~~ "Interested person" means a person who has a real property interest, a water right, or an
5 economic interest that is or may be directly and adversely affected by the department's preliminary decision
6 regarding degradation of state waters, pursuant to 75-5-303. The term includes a person who has requested
7 authorization to degrade high-quality waters.
8 ~~(47)(16)(17)~~ "Load allocation" means the portion of a receiving water's loading capacity that is
9 allocated to one of its existing or future nonpoint sources or to natural background sources.
10 ~~(48)(17)(18)~~ "Loading capacity" means the mass of a pollutant that a water body can assimilate without
11 a violation of water quality standards. For pollutants that cannot be measured in terms of mass, it means the
12 maximum change that can occur from the best practicable condition in a surface water without causing a
13 violation of the surface water quality standards.
14 ~~(49)(18)(19)~~ "Local department of health" means the staff, including health officers, employed by a
15 county, city, city-county, or district board of health.
16 ~~(20)(19)(20)~~ "Metal parameters" includes but is not limited to aluminum, antimony, arsenic, beryllium,
17 barium, cadmium, chromium, copper, fluoride, iron, lead, manganese, mercury, nickel, selenium, silver,
18 thallium, and zinc.
19 ~~(24)(20)(21)~~ "Mixing zone" means an area established in a permit or final decision on nondegradation
20 issued by the department where water quality standards may be exceeded, subject to conditions that are
21 imposed by the department and that are consistent with the rules adopted by the board department.
22 ~~(22)(21)(22)~~ "Nutrient standards variance" means numeric water quality criteria for nutrients based on
23 a determination that base numeric nutrient standards cannot be achieved because of economic impacts or
24 because of the limits of technology. The term includes individual, general, and alternative nutrient standards
25 variances in accordance with 75-5-313.
26 ~~(23)(22)(23)~~ "Nutrient work group" means an advisory work group, convened by the department,
27 representing publicly owned and privately owned point sources of pollution, nonpoint sources of pollution, and
28 other interested parties that will advise the department on the base numeric nutrient standards, the

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- 1 development of nutrient standards variances, and the implementation of those standards and variances
2 together with associated economic impacts.
- 3 ~~(24)(23)(24)~~ "Other wastes" means garbage, municipal refuse, decayed wood, sawdust, shavings,
4 bark, lime, sand, ashes, offal, night soil, oil, grease, tar, heat, chemicals, dead animals, sediment, wrecked or
5 discarded equipment, radioactive materials, solid waste, and all other substances that may pollute state waters.
- 6 ~~(25)(24)(25)~~ "Outstanding resource waters" means:
7 (a) state surface waters located wholly within the boundaries of areas designated as national parks or
8 national wilderness areas as of October 1, 1995; or
9 (b) other surface waters or ground waters classified by the board department under the provisions of
10 75-5-316 and approved by the legislature.
- 11 ~~(26)(25)(26)~~ "Owner or operator" means a person who owns, leases, operates, controls, or supervises
12 a point source.
- 13 ~~(27)(26)(27)~~ "Parameter" means a physical, biological, or chemical property of state water when a
14 value of that property affects the quality of the state water.
- 15 ~~(28)(27)(28)~~ "Person" means the state, a political subdivision of the state, institution, firm, corporation,
16 partnership, individual, or other entity and includes persons resident in Canada.
- 17 ~~(29)(28)(29)~~ "Point source" means a discernible, confined, and discrete conveyance, including but not
18 limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, or vessel or
19 other floating craft, from which pollutants are or may be discharged.
- 20 ~~(30)(29)(30)~~ (a) "Pollution" means:
21 (i) contamination or other alteration of the physical, chemical, or biological properties of state waters
22 that exceeds that permitted by Montana water quality standards, including but not limited to standards relating
23 to change in temperature, taste, color, turbidity, or odor; or
24 (ii) the discharge, seepage, drainage, infiltration, or flow of liquid, gaseous, solid, radioactive, or other
25 substance into state water that will or is likely to create a nuisance or render the waters harmful, detrimental, or
26 injurious to public health, recreation, safety, or welfare, to livestock, or to wild animals, birds, fish, or other
27 wildlife.
- 28 (b) The term does not include:

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- 1 (i) a discharge, seepage, drainage, infiltration, or flow that is authorized under the pollution discharge
2 permit rules adopted by the board department under this chapter;
- 3 (ii) activities conducted under this chapter that comply with the conditions imposed by the department
4 in short-term authorizations pursuant to 75-5-308;
- 5 (iii) contamination of ground water within the boundaries of a geologic storage reservoir, as defined in
6 82-11-101, by a carbon dioxide injection well in accordance with a permit issued pursuant to Title 82, chapter
7 11, part 1;
- 8 (iv) contamination of ground water within the boundaries of an underground mine using in situ coal
9 gasification and operating in accordance with a permit issued under 82-4-221;
- 10 (c) Contamination referred to in subsections ~~(30)(b)(iii) and (30)(b)(iv)~~ ~~(29)(b)(iii) and (29)(b)(iv)~~
11 ~~(30)(b)(iii) and (30)(b)(iv)~~ does not require a mixing zone.
- 12 ~~(31)(30)(31)~~ "Sewage" means water-carried waste products from residences, public buildings,
13 institutions, or other buildings, including discharge from human beings or animals, together with ground water
14 infiltration and surface water present.
- 15 ~~(32)(31)(32)~~ "Sewage system" means a device for collecting or conducting sewage, industrial wastes,
16 or other wastes to an ultimate disposal point.
- 17 ~~(33)(32)(33)~~ "Standard of performance" means a standard adopted by the board department for the
18 control of the discharge of pollutants that reflects the greatest degree of effluent reduction achievable through
19 application of the best available demonstrated control technology, processes, operating methods, or other
20 alternatives, including, when practicable, a standard permitting no discharge of pollutants.
- 21 ~~(34)(33)(34)~~ (a) "State waters" means a body of water, irrigation system, or drainage system, either
22 surface or underground.
- 23 (b) The term does not apply to:
24 (i) ponds or lagoons used solely for treating, transporting, or impounding pollutants; or
25 (ii) irrigation waters or land application disposal waters when the waters are used up within the
26 irrigation or land application disposal system and the waters are not returned to state waters.
- 27 ~~(35)(34)(35)~~ "Sufficient credible data" means chemical, physical, or biological monitoring data, alone or
28 in combination with narrative information, that supports a finding as to whether a water body is achieving

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compliance with applicable water quality standards.

(36)(35)(36) "Threatened water body" means a water body or stream segment for which sufficient credible data and calculated increases in loads show that the water body or stream segment is fully supporting its designated uses but threatened for a particular designated use because of:

(a) proposed sources that are not subject to pollution prevention or control actions required by a discharge permit, the nondegradation provisions, or reasonable land, soil, and water conservation practices; or

(b) documented adverse pollution trends.

(37)(36)(37) "Total maximum daily load" or "TMDL" means the sum of the individual waste load allocations for point sources and load allocations for both nonpoint sources and natural background sources established at a level necessary to achieve compliance with applicable surface water quality standards.

(38)(37)(38) "Treatment works" means works, including sewage lagoons, installed for treating or holding sewage, industrial wastes, or other wastes.

(39)(38)(39) "Waste load allocation" means the portion of a receiving water's loading capacity that is allocated to one of its existing or future point sources.

(40)(39)(40) "Water quality protection practices" means those activities, prohibitions, maintenance procedures, or other management practices applied to point and nonpoint sources designed to protect, maintain, and improve the quality of state waters. Water quality protection practices include but are not limited to treatment requirements, standards of performance, effluent standards, and operating procedures and practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from material storage.

(41)(40)(41) "Water well" means an excavation that is drilled, cored, bored, washed, driven, dug, jetted, or otherwise constructed and intended for the location, diversion, artificial recharge, or acquisition of ground water.

(42)(41)(42) "Watershed advisory group" means a group of individuals who wish to participate in an advisory capacity in revising and reprioritizing the list of water bodies developed under 75-5-702 and in the development of TMDLs under 75-5-703, including those groups or individuals requested by the department to participate in an advisory capacity as provided in 75-5-704."

Section 37. Section 75-5-105, MCA, is amended to read:

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~~"75-5-105.—Confidentiality of records.—Except as provided in 80-15-108, any information concerning sources of pollution that is furnished to the board or department or that is obtained by either of them the department is a matter of public record and open to public use. However, any information unique to the owner or operator of a source of pollution that would, if disclosed, reveal methods or processes entitled to protection as trade secrets must be maintained as confidential if so determined by a court of competent jurisdiction. The owner or operator shall file a declaratory judgment action to establish the existence of a trade secret if the owner or operator wishes the information to remain confidential. The department must be served in the action and may intervene as a party. Any information not intended to be public when submitted to the board or department must be submitted in writing and clearly marked as confidential. Except as provided in 75-5-314, the data describing physical and chemical characteristics of a waste discharged to state waters may not be considered confidential. The board department may use any information in compiling or publishing analyses or summaries relating to water pollution if the analyses or summaries do not identify any owner or operator of a source of pollution or reveal any information that is otherwise made confidential by this section."~~

Section 38. Section 75-5-106, MCA, is amended to read:

"75-5-106. Interagency cooperation -- enforcement authorization. (1) The council, board, ~~board~~, and the department may require the use of records of all state agencies and may seek the assistance of the agencies. When the department's review of a permit application submitted under another chapter or title is required or requested, the department shall coordinate the review under this chapter with the review conducted by the agency or unit under the other chapter, following the time schedule for that review. State, county, and municipal officers and employees, including sanitarians and other employees of local departments of health, shall cooperate with the council, board, ~~board~~, and the department in furthering the purposes of this chapter, so far as is practicable and consistent with their other duties.

(2) The department may authorize a local water quality district established according to the provisions of Title 7, chapter 13, part 45, to enforce the provisions of this chapter and rules adopted under this chapter on a case-by-case basis. If a local water quality district requests the authorization, the local water quality district shall present appropriate documentation to the department that a person is violating permit requirements established by the department or may be causing pollution, as defined in 75-5-103, of state waters or placing or

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1 causing to be placed wastes in a location where they are likely to cause pollution of state waters. The ~~board~~
2 ~~department~~ may adopt rules regarding the granting of enforcement authority to local water quality districts."

3
4 **Section 39.** Section 75-5-201, MCA, is amended to read:

5 **"75-5-201. Board rules**~~Rules~~ **authorized.** (1) (a) The ~~board~~~~department~~ shall, except as provided in
6 75-5-411 and subject to the provisions of 75-5-203, adopt rules for the administration of this chapter.

7 (b) The ~~board~~~~department~~ shall adopt rules that describe the location and the times of the year when
8 suction dredging is permissible. These rules may be adopted only after consultation with the local conservation
9 districts in the areas subject to the rule.

10 (2) The ~~board's~~~~department's~~ rules may include a fee schedule or system for assessment of
11 administrative penalties as provided under 75-5-611."

12
13 ~~Section 40. Section 75-5-202, MCA, is amended to read:~~

14 ~~"75-5-202. Board hearings~~~~Hearings.~~ ~~The board~~~~department~~ ~~shall hold hearings necessary for the~~
15 ~~proper administration of this chapter or, in the case of permit issuance hearings, delegate this function to the~~
16 ~~department."~~

17
18 **Section 41.** Section 75-5-203, MCA, is amended to read:

19 **"75-5-203. State regulations no more stringent than federal regulations or guidelines.** (1) Except
20 as provided in subsections (2) through (5) or unless required by state law, the ~~board~~~~department~~ may not adopt
21 a rule to implement 75-5-301, 75-5-302, 75-5-303, or 75-5-310 that is more stringent than the comparable
22 federal regulations or guidelines that address the same circumstances. The ~~board~~~~department~~ may incorporate
23 by reference comparable federal regulations or guidelines.

24 (2) The ~~board~~~~department~~ may adopt a rule to implement this chapter that is more stringent than
25 comparable federal regulations or guidelines only if the ~~board~~~~department~~ makes a written finding after a public
26 hearing and public comment and based on evidence in the record that:

27 (a) the proposed state standard or requirement protects public health or the environment of the state;
28 and

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1 (b) the state standard or requirement to be imposed can mitigate harm to the public health or
2 environment and is achievable under current technology.

3 (3) The written finding must reference pertinent, ascertainable, and peer-reviewed scientific studies
4 contained in the record that forms the basis for the ~~board's~~~~department's~~ conclusion. The written finding must
5 also include information from the hearing record regarding the costs to the regulated community that are
6 directly attributable to the proposed state standard or requirement.

7 (4) (a) A person affected by a rule of the ~~board~~ that that ~~the~~ person believes to be more stringent
8 than comparable federal regulations or guidelines may petition the ~~board~~~~department~~ ~~board~~ to review the rule. If
9 the ~~board~~~~department~~ ~~board~~ determines that the rule is more stringent than comparable federal regulations or
10 guidelines, the ~~board~~~~department~~ shall comply with this section by either revising the rule to conform to the
11 federal regulations or guidelines or by making the written finding, as provided under subsection (2), within a
12 reasonable period of time, not to exceed 8 months after receiving the petition. A petition under this section does
13 not relieve the petitioner of the duty to comply with the challenged rule. The ~~board~~~~department~~ may charge a
14 petition filing fee in an amount not to exceed \$250.

15 (b) A person may also petition the ~~board~~~~department~~ ~~board~~ for a rule review under subsection (4)(a) if
16 the ~~board~~~~department~~ adopts a rule in an area in which no federal regulations or guidelines existed and the
17 federal government subsequently establishes comparable regulations or guidelines that are less stringent than
18 the previously adopted ~~board~~~~department~~ rule.

19 (5) This section does not apply to a rule adopted under the emergency rulemaking provisions of 2-4-
20 303(1)."

21
22 **Section 42.** Section 75-5-222, MCA, is amended to read:

23 **"75-5-222. State regulation for natural conditions.** (1) The department may not apply a standard to
24 a water body for water quality that is more stringent than the nonanthropogenic condition of the water body. For
25 the parameters for which the applicable standards are more stringent than the nonanthropogenic condition, the
26 standard is the nonanthropogenic condition of the parameter in the water body. The department shall
27 implement the standard in a manner that provides for the water quality standards for downstream waters to be
28 attained and maintained.

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- 1 (2) (a) For water bodies where the standard is more stringent than the condition of the water body but
2 subsection (1) is not applicable, the ~~board~~department shall adopt rules consistent with comparable federal
3 rules and guidelines providing criteria and procedures for the department to issue variances from standards if:
4 (i) the condition cannot reasonably be expected to be remediated during the permit term for which the
5 application for variance has been received; and
6 (ii) the discharge to which the variance applies would not materially contribute to the condition.
7 (b) A variance issued pursuant to subsection (2)(a) must be reviewed every 5 years and may be
8 modified or terminated as a result of the review."

9
10 **Section 43.** Section 75-5-301, MCA, is amended to read:

11 **"75-5-301. Classification and standards for state waters.** Consistent with the provisions of 80-15-
12 201 and this chapter, the ~~board~~department shall:

- 13 (1) establish the classification of all state waters in accordance with their present and future most
14 beneficial uses, creating an appropriate classification for streams that, due to sporadic flow, do not support an
15 aquatic ecosystem that includes salmonid or nonsalmonid fish;
16 (2) formulate and adopt standards of water quality, ~~giving consideration to~~ considering the economics
17 of waste treatment and prevention. When rules are adopted regarding temporary standards, they must conform
18 with the requirements of 75-5-312. Standards ~~adopted by the board~~ department must meet the following
19 requirements:
20 (a) for carcinogens, the water quality standard for protection of human health must be the value
21 associated with an excess lifetime cancer risk level, assuming continuous lifetime exposure, not to exceed 1×10^{-3}
22 in the case of arsenic and 1×10^{-5} for other carcinogens. However, if a standard established at a risk level
23 of 1×10^{-3} for arsenic or 1×10^{-5} for other carcinogens violates the maximum contaminant level obtained from
24 40 CFR, part 141, then the maximum contaminant level must be adopted as the standard for that carcinogen.
25 (b) standards for the protection of aquatic life do not apply to ground water.
26 (3) review, from time to time at intervals of not more than 3 years and, to the extent permitted by this
27 chapter, revise established classifications of waters and adopted standards of water quality;
28 (4) adopt rules governing the granting of mixing zones, requiring that mixing zones granted by the

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- 1 department be specifically identified and requiring that mixing zones have:
2 (a) the smallest practicable size;
3 (b) a minimum practicable effect on water uses; and
4 (c) definable boundaries;
5 (5) adopt rules implementing the nondegradation policy established in 75-5-303, including but not
6 limited to rules that:
7 (a) provide a procedure for department review and authorization of degradation;
8 (b) establish criteria for the following:
9 (i) determining important economic or social development; and
10 (ii) weighing the social and economic importance to the public of allowing the proposed project against
11 the cost to society associated with a loss of water quality;
12 (c) establish criteria for determining whether a proposed activity or class of activities, in addition to
13 those activities identified in 75-5-317, will result in nonsignificant changes in water quality for any parameter in
14 order that those activities are not required to undergo review under 75-5-303(3). These criteria must be
15 established in a manner that generally:
16 (i) equates significance with the potential for harm to human health, a beneficial use, or the
17 environment;
18 (ii) considers both the quantity and the strength of the pollutant;
19 (iii) considers the length of time the degradation will occur;
20 (iv) considers the character of the pollutant so that greater significance is associated with carcinogens
21 and toxins that bioaccumulate or biomagnify and lesser significance is associated with substances that are less
22 harmful or less persistent.
23 (d) provide that changes of nitrate as nitrogen in ground water are nonsignificant if the discharge will
24 not cause degradation of surface water and the predicted concentration of nitrate as nitrogen at the boundary of
25 the ground water mixing zone does not exceed:
26 (i) 7.5 milligrams per liter from sources other than sewage;
27 (ii) 5.0 milligrams per liter from sewage discharged from a system that does not use level two
28 treatment in an area where the ground water nitrate as nitrogen is 5.0 milligrams per liter or less;

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- 1 (iii) 7.5 milligrams per liter from sewage discharged from a system using level two treatment, which
2 must be defined in the rules; or
3 (iv) 7.5 milligrams per liter from sewage discharged from a system in areas where the ground water
4 nitrate as nitrogen level exceeds 5.0 milligrams per liter primarily from sources other than human waste.
5 (6) to the extent practicable, ensure that the rules adopted under subsection (5) establish objective
6 and quantifiable criteria for various parameters. These criteria must, to the extent practicable, constitute
7 guidelines for granting or denying applications for authorization to degrade high-quality waters under the policy
8 established in 75-5-303(2) and (3).
9 (7) adopt rules to implement this section."

10
11 **Section 44.** Section 75-5-302, MCA, is amended to read:

12 **"75-5-302. Revising classifications in accordance with existing, present, and future most**
13 **beneficial uses of water bodies.** When the ~~board or~~ department is presented with facts indicating that a body
14 of water is not properly classified in accordance with its existing, present, and future most beneficial uses, the
15 department shall, within 90 days, evaluate the facts ~~and advise the board whether the water body is not~~
16 ~~properly classified.~~ If the ~~board~~ department determines that the water body is not properly classified, the ~~board~~
17 department shall initiate rulemaking to properly classify the water body in accordance with its existing, present,
18 and future most beneficial uses. ~~Board action~~ Action pursuant to this section is subject to 75-5-307."

19
20 **Section 45.** Section 75-5-303, MCA, is amended to read:

21 **"75-5-303. Nondegradation policy.** (1) Existing uses of state waters and the level of water quality
22 necessary to protect those uses must be maintained and protected.

23 (2) Unless authorized by the department under subsection (3) or exempted from review under 75-5-
24 317, the quality of high-quality waters must be maintained.

25 (3) The department may not authorize degradation of high-quality waters unless it has been
26 affirmatively demonstrated by a preponderance of evidence to the department that:

27 (a) degradation is necessary because there are no economically, environmentally, and technologically
28 feasible modifications to the proposed project that would result in no degradation;

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- 1 (b) the proposed project will result in important economic or social development and that the benefit of
2 the development exceeds the costs to society of allowing degradation of high-quality waters;
3 (c) existing and anticipated use of state waters will be fully protected; and
4 (d) the least degrading water quality protection practices determined by the department to be
5 economically, environmentally, and technologically feasible will be fully implemented by the applicant prior to
6 and during the proposed activity.

7 (4) The department shall issue a preliminary decision either denying or authorizing degradation and
8 shall provide public notice and a 30-day comment period prior to issuing a final decision. The department's
9 preliminary and final decisions must include:

10 (a) a statement of the basis for the decision; and

11 (b) a detailed description of all conditions applied to any authorization to degrade state waters,
12 including, when applicable, monitoring requirements, required water protection practices, reporting
13 requirements, effluent limits, designation of the mixing zones, the limits of degradation authorized, and methods
14 of determining compliance with the authorization for degradation.

15 (5) An interested person wishing to challenge a final department decision may request a hearing
16 before the ~~board~~ department board within 30 days of the final department decision. The contested case
17 procedures of Title 2, chapter 4, part 6, apply to a hearing under this section.

18 (6) Periodically, but not more often than every 5 years, the department may review authorizations to
19 degrade state waters. Following the review, the department may, after timely notice and opportunity for hearing,
20 modify the authorization if the department determines that an economically, environmentally, and
21 technologically feasible modification to the development exists. The decision by the department to modify an
22 authorization may be appealed to the ~~board~~ department board.

23 (7) The ~~board~~ department may not issue an authorization to degrade state waters that are classified
24 as outstanding resource waters.

25 (8) The ~~board~~ department shall adopt rules to implement this section."

26
27 **Section 46.** Section 75-5-304, MCA, is amended to read:

28 **"75-5-304. Adoption of standards -- pretreatment, effluent, performance.** (1) The board

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1 department shall:

- 2 (a) adopt pretreatment standards for wastewater discharged into a municipal disposal system;
- 3 (b) adopt effluent standards as defined in 75-5-103;
- 4 (c) adopt toxic effluent standards and prohibitions;
- 5 (d) establish standards of performance for new point source discharges; and
- 6 (e) adopt rules necessary to ensure the primacy of the department to regulate cooling water intake
- 7 structures under 33 U.S.C. 1326(b).

8 (2) In taking action under subsection (1), the ~~board~~department shall ensure that the standards are

9 cost-effective and economically, environmentally, and technologically feasible."

11 **Section 47.** Section 75-5-305, MCA, is amended to read:

12 **"75-5-305. Adoption of requirements for treatment of wastes -- variance procedure -- appeals.**

13 (1) The ~~board~~department may establish minimum requirements for the treatment of wastes. For cases in which

14 the federal government has adopted technology-based treatment requirements for a particular industry or

15 activity in 40 CFR, chapter I, subchapter N, the ~~board~~department shall adopt those requirements by reference.

16 To the extent that the federal government has not adopted minimum treatment requirements for a particular

17 industry or activity, the ~~board~~department may do so, through rulemaking, for parameters likely to affect

18 beneficial uses, ensuring that the requirements are cost-effective and economically, environmentally, and

19 technologically feasible. Except for the technology-based treatment requirements set forth in 40 CFR, chapter I,

20 subchapter N, minimum treatment may not be required to address the discharge of a parameter when the

21 discharge is considered nonsignificant under rules adopted pursuant to 75-5-301.

22 (2) (a) The ~~board~~department shall establish minimum requirements for the control and disposal of

23 sewage from private and public buildings, including standards and procedures for variances from the

24 requirements.

25 (b) For gray water reuse systems, the ~~board~~department shall establish rules that:

- 26 (i) allow the diversion of gray water from wastewater treatment systems and limit the amount of gray
- 27 water flow allowed by permit;
- 28 (ii) address the uses of gray water, including when and how gray water may be applied to land; and

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1 (iii) include any other provisions that the ~~board~~department considers necessary to ensure that gray

2 water reuse systems comply with laws and regulations and protect public health and the environment.

3 (3) An applicant for a variance from minimum requirements adopted by a local board of health

4 pursuant to 50-2-116 may appeal the local board of health's final decision to the department by submitting a

5 written request for a hearing within 30 days after the decision. The written request must describe the activity for

6 which the variance is requested, include copies of all documents submitted to the local board of health in

7 support of the variance, and specify the reasons for the appeal of the local board of health's final decision.

8 (4) The department shall conduct a hearing on the request pursuant to Title 2, chapter 4, part 6.

9 Within 30 days after the hearing, the department shall grant, conditionally grant, or deny the variance. The

10 department shall base its decision on the ~~board's~~department's standards for a variance.

11 (5) A decision of the department pursuant to subsection (4) is appealable to district court under the

12 provisions of Title 2, chapter 4, part 7."

14 **Section 48.** Section 75-5-307, MCA, is amended to read:

15 **"75-5-307. Hearings required for classification, formulation of standards, and rulemaking. (1)**

16 Before streams are classified or standards established or modified or rules made, revoked, or modified, the

17 ~~board~~department shall hold a public hearing. Notice of the hearing specifying the waters concerned and the

18 classification, standards, or modification of them and any rules proposed to be made, revoked, or modified shall

19 must be published at least once a week for 3 consecutive weeks in a daily newspaper of general circulation in

20 the area affected. Notice shall ~~also~~must be mailed directly to persons the ~~board~~department believes may be

21 affected by the proposed action. The council shall must be given not less than 30 days prior to first publication

22 to comment on the proposed action.

23 (2) At a hearing held under this section, the ~~board~~department shall give all interested persons

24 reasonable opportunity to submit data, views, or arguments, orally or in writing. The ~~board~~department may

25 make rules for the orderly conduct of the hearing but need not require compliance with the rules of evidence or

26 procedure applicable to hearings held under 75-5-811."

28 **Section 49.** Section 75-5-308, MCA, is amended to read:

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1 **"75-5-308. Short-term water authorizations -- water quality standards.** (1) Because these
2 activities promote the public interest, the department may, if necessary, authorize short-term exemptions from
3 the water quality standards for the following activities:
4 (a) emergency remediation activities that have been approved, authorized, or required by the
5 department; and
6 (b) application of a pesticide that is registered by the United States environmental protection agency
7 pursuant to 7 U.S.C. 136(a) when it is used to control nuisance aquatic organisms or to eliminate undesirable
8 and nonnative aquatic species.
9 (2) An authorization must include conditions that minimize, to the extent practicable, the magnitude of
10 any change in the concentration of the parameters affected by the activity and the length of time during which
11 any change may occur. The authorization must also include conditions that prevent significant risk to public
12 health and that ensure that existing and designated uses of state water are protected and maintained upon
13 completion of the activity. Authorizations issued under this section may include conditions that require water
14 quality or quantity monitoring and reporting. In the performance of its responsibilities under this section, the
15 department may negotiate operating agreements with other departments of state government that are intended
16 to minimize duplication in review of activities eligible for authorizations under this section.
17 (3) An authorization to use a pesticide does not relieve a person from the duty to comply with Title 80,
18 chapters 8 and 15. The department may not authorize an exemption from water quality standards for an activity
19 that requires a discharge permit under rules adopted by the board pursuant to 75-5-401."
20
21 **Section 50.** Section 75-5-310, MCA, is amended to read:
22 **"75-5-310. Site-specific standards of water quality for aquatic life.** (1) Notwithstanding any other
23 provisions of this chapter and except as provided in subsection (2), the board department, upon application by
24 a permit applicant, permittee, or person potentially liable under any state or federal environmental remediation
25 statute, shall adopt site-specific standards of water quality for aquatic life, both acute and chronic, as the
26 standards of water quality required under 75-5-301(2) and (3). The site-specific standards of water quality must
27 be developed in accordance with the procedures set forth in draft or final federal regulations, guidelines, or
28 criteria.

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1 (2) If the department, based upon its review of an application submitted under subsection (1) and
2 sound scientific, technical, and available site-specific evidence, determines that the development of site-specific
3 criteria in accordance with draft or final federal regulations, guidelines, or criteria would not be protective of
4 beneficial uses, the department, within 90 days of the submission of an application under subsection (1), shall
5 notify the applicant in writing of its determination and of all additional procedures that the applicant is required
6 to comply with in the development of site-specific standards of water quality under this section. If there is a
7 dispute between the department and the applicant as to the additional procedures, the ~~board~~department ~~board~~
8 shall, on the request of the department or the applicant, hear and determine the dispute. The ~~board's~~
9 ~~department's board's~~ decision must be based on sound scientific, technical, and available site-specific
10 evidence."
11
12 **Section 51.** Section 75-5-311, MCA, is amended to read:
13 **"75-5-311. Local water quality districts -- ~~board~~department approval -- local water quality**
14 **programs.** (1) A county that establishes a local water quality district according to the procedures specified in
15 Title 7, chapter 13, part 45, shall, in consultation with the department, undertake planning and information-
16 gathering activities necessary to develop a proposed local water quality program.
17 (2) A county may implement a local water quality program in a local water quality district if the
18 program is approved by the ~~board~~department after a hearing conducted under 75-5-202.
19 (3) In approving a local water quality program, the ~~board~~department shall determine that the program
20 is consistent with the purposes and requirements of Title 75, chapter 5, and that the program will be effective in
21 protecting, preserving, and improving the quality of surface water and ground water, considering the
22 administrative organization, staff, and financial and other resources available to implement the program.
23 (4) Subject to the ~~board's~~department approval, the commissioners and the governing bodies of cities
24 and towns that participate in a local water quality district may adopt local ordinances to regulate the following
25 specific facilities and sources of pollution:
26 (a) onsite wastewater disposal facilities;
27 (b) storm water runoff from paved surfaces;
28 (c) service connections between buildings and publicly owned sewer mains;

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- 1 (d) facilities that use or store halogenated and nonhalogenated solvents, including hazardous
2 substances that are referenced in 40 CFR 261.31, United States environmental protection agency hazardous
3 waste numbers F001 through F005, as amended; and
4 (e) Internal combustion engine lubricants.
5 (5) (a) For the facilities and sources of pollution included in subsection (4) and consistent with the
6 provisions of subsection (6), the local ordinances may:
7 (i) be compatible with or more stringent or more extensive than the requirements imposed by 75-5-
8 304, 75-5-305, and 75-5-401 through 75-5-404 and rules adopted under those sections to protect water quality,
9 establish waste discharge permit requirements, and establish best management practices for substances that
10 have the potential to pollute state waters;
11 (ii) provide for administrative procedures, administrative orders and actions, and civil enforcement
12 actions that are consistent with 75-5-601 through 75-5-604, 75-5-611 through 75-5-616, 75-5-621, and 75-5-
13 622 and rules adopted under those sections; and
14 (iii) provide for civil penalties not to exceed \$1,000 per violation, provided that each day of violation of
15 a local ordinance constitutes a separate violation, and criminal penalties not to exceed \$500 per day of violation
16 or imprisonment for not more than 30 days, or both.
17 (b) Board Department approval of an ordinance or local law that is more stringent than the
18 comparable state law is subject to the provisions of 75-5-203.
19 (6) The local ordinances authorized by this section may not:
20 (a) duplicate the department's requirements and procedures relating to permitting of waste discharge
21 sources and enforcement of water quality standards;
22 (b) regulate any facility or source of pollution to the extent that the facility or source is:
23 (i) required to obtain a permit or other approval from the department or federal government or is the
24 subject of an administrative order, a consent decree, or an enforcement action pursuant to Title 75, chapter 5,
25 part 4; Title 75, chapter 6; Title 75, chapter 10; the federal Comprehensive Environmental Response,
26 Compensation, and Liability Act of 1980, 42 U.S.C. 9601 through 9675, as amended; or federal environmental,
27 safety, or health statutes and regulations;
28 (ii) exempted from obtaining a permit or other approval from the department because the facility or

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- 1 source is required to obtain a permit or other approval from another state agency or is the subject of an
2 enforcement action by another state agency; or
3 (iii) subject to the provisions of Title 80, chapter 8 or chapter 15.
4 (7) If the boundaries of a district are changed after the board-department has approved the local
5 water quality program for the district, the board of directors of the local water quality district shall submit a
6 program amendment to the board-department and obtain the board's-department approval of the program
7 amendment before implementing the local water quality program in areas that have been added to the district.
8 (8) The department shall monitor the implementation of local water quality programs to ensure that
9 the programs are adequate to protect, preserve, and improve the quality of the surface water and ground water
10 and are being administered in a manner consistent with the purposes and requirements of Title 75, chapter 5. If
11 ~~the department finds that a local water quality program is not adequate to protect, preserve, and improve the~~
12 ~~quality of the surface water and ground water or is not being administered in a manner consistent with the~~
13 ~~purposes and requirements of Title 75, chapter 5, the department shall report to the board,~~
14 (9) If the board-department determines that a local water quality program is inadequate to protect,
15 preserve, and improve the quality of the surface water and ground water in the local water quality district or that
16 the program is being administered in a manner inconsistent with Title 75, chapter 5, the board-department shall
17 give notice and conduct a hearing on the matter.
18 (10) If after the hearing the board-department determines that the program is inadequate to protect,
19 preserve, and improve the quality of the surface water and ground water in the local water quality district or that
20 it is not being administered in a manner consistent with the purposes of Title 75, chapter 5, the board
21 department shall require that necessary corrective measures be taken within a reasonable time, not to exceed
22 60 days.
23 (11) If an ordinance adopted under this section conflicts with a requirement imposed by the
24 department's water quality program, the department's requirement supersedes the local ordinance.
25 (12) If the board-department finds that, because of the complexity or magnitude of a particular water
26 pollution source, the control of the source is beyond the reasonable capability of a local water quality district or
27 may be more efficiently and economically performed at the state level, the board ~~may direct the department to~~
28 may assume and retain control over the source. A charge may not be assessed against the local water quality

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1 district for that source. Findings made under this subsection may be based on the nature of the source involved
2 or on the source's relationship to the size of the community in which it is located."

3
4 **Section 52.** Section 75-5-312, MCA, is amended to read:

5 **"75-5-312. Temporary water quality standards.** (1) The ~~board-department~~ may, upon
6 ~~recommendation of the department on its own accord~~ or upon a petition for rulemaking, as provided in 2-4-315,
7 by a person, including a permit applicant or permittee, temporarily modify a water quality standard for a specific
8 water body or segment on a parameter-by-parameter basis in those instances in which substantive information
9 indicates that the water body or segment is not supporting its designated uses. When the ~~board-department~~
10 adopts temporary standards, the goal is to improve water quality to the point at which all the beneficial uses
11 designated for that water body or segment are supported.

12 (2) As a condition for establishing temporary water quality standards for a particular water body or
13 segment, the department or the petitioner, as applicable, shall prepare a support document and a preliminary
14 implementation plan for use by the ~~board-department~~ in determining whether to adopt the proposed temporary
15 water quality standards. A person shall submit a support document and a preliminary implementation plan to
16 the department for its review at least 60 days prior to filing a petition with the ~~board-department~~ requesting the
17 adoption of temporary water quality standards.

18 (3) The support document prepared by the department or the petitioner, as applicable, must describe:

19 (a) the chemical, biological, and physical condition of the water body or segment;

20 (b) the specific water quality limiting factors affecting the water body or segment;

21 (c) the existing water quality standards that are not being achieved;

22 (d) the temporary modifications to the existing water quality standards being requested;

23 (e) existing beneficial uses; and

24 (f) the designated uses considered attainable in the absence of the water quality limiting factors.

25 (4) The preliminary implementation plan prepared by the department or the petitioner, as applicable,
26 must contain:

27 (a) a description of the proposed actions that will eliminate the water quality limiting factors identified
28 in subsection (3)(b) to the extent considered achievable; and

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1 (b) a schedule for implementing the proposed actions that ensures that the existing water quality
2 standards for the parameter or parameters at issue are met as soon as reasonably practicable.

3 (5) Within 30 days after the ~~board's-department's~~ adoption of temporary water quality standards, the
4 department or the petitioner, as applicable, shall:

5 (a) modify the preliminary implementation plan and schedule to reflect the requirements and
6 timeframe adopted by the ~~board-department~~ for the temporary standards; and

7 (b) develop a detailed work plan describing the implementation activities that will be conducted during
8 the first field season of the temporary standards. The work plan must be approved by the director of the
9 department.

10 (6) By March 1 of each year that the temporary water quality standards are in effect, the department
11 or the petitioner, as applicable, shall submit a detailed work plan describing the implementation activities that
12 will be conducted during that season. The annual work plans must be approved by the director of the
13 department. The department shall maintain copies of the implementation plan, schedule, and annual work plans
14 and any modifications to those plans and schedule.

15 (7) Upon the ~~board's-department's~~ adoption of a temporary water quality standard, the department
16 shall ensure that reasonable conditions and limitations designed to achieve compliance with the implementation
17 plan are established in appropriate discharge permits.

18 (8) (a) A temporary modification of a water quality standard may not result in adverse impacts to
19 existing beneficial uses or be established for a total period longer than 20 years.

20 (b) During the period of the temporary modification, the ~~board-department~~ may not allow a discharge
21 that will cause overall water quality to become worse than the overall quality of the water body or segment prior
22 to the discharge.

23 (9) If a state water is designated as having temporary standards, the department shall report to the
24 ~~board-at least every 3 years or upon request of the board-regarding~~ whether adequate efforts have been made
25 to implement the plans submitted as the basis for the temporary standards.

26 (10) The ~~board-department~~ shall review the temporary standards and implementation plan at least
27 every 3 years at a public hearing for which notice and an opportunity for comment have been provided. During
28 this review, the ~~board-department~~ shall consider the progress made in restoring water quality to a level that

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1 achieves the goal of the temporary water quality standards. The ~~board-department~~ may terminate or modify the
2 temporary standards based on information submitted at the time of review.

3 (11) The ~~board-department~~ shall terminate a temporary standard for a parameter if:

4 (a) values for the modified parameter or parameters improve to conditions that support all designated
5 uses for that classification;

6 (b) the state water for which the temporary standard is adopted is reclassified as provided for in 75-5-
7 302; or

8 (c) the plan submitted in support of the temporary water quality standard is not being implemented
9 according to the plan's schedule or modifications to that plan or schedule made by the ~~board-or-department~~.

10 (12) The ~~board-or-the-department~~ may modify the implementation plan if there is convincing evidence
11 that the plan needs modification.

12 (13) If a temporary standard for a parameter in a particular state water is terminated because the plan
13 submitted in support of the temporary water quality standard is not being implemented according to the plan's
14 schedule or modifications to that schedule made by the ~~board-or-department~~, a person may request a new
15 temporary standard by submitting both a petition for rulemaking and an implementation plan that meet the
16 requirements of subsection (4). However, the ~~board-department~~ may not adopt another temporary standard for
17 the parameter in the state water that would cumulatively be in effect for a total period longer than 20 years for
18 the parameter in the state water."

19
20 **Section 53.** Section 75-5-313, MCA, is amended to read:

21 **"75-5-313. Nutrient standards variances -- Individual, general, and alternative.** (1) The
22 department shall, on a case-by-case basis, approve the use of an individual nutrient standards variance in a
23 discharge permit based upon adequate justification pursuant to subsection (2) that attainment of the base
24 numeric nutrient standards is precluded due to economic impacts, limits of technology, or both.

25 (2) (a) The department, in consultation with the nutrient work group, shall develop guidelines for
26 individual nutrient standards variances to ensure that the economic impacts from base numeric nutrient
27 standards on public and private systems are equally and adequately addressed. In developing those guidelines,
28 the department and the nutrient work group shall consider economic impacts appropriate for application within

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1 Montana, acknowledging that advanced treatment technologies for removing nutrients will result in significant
2 and widespread economic impacts.

3 (b) The department shall consult with the nutrient work group prior to recommending base numeric
4 nutrient standards ~~to the board~~ and shall continue to consult with the nutrient work group in implementing
5 individual nutrient standards variances.

6 (3) The department shall review each application for an individual nutrient standards variance on a
7 case-by-case basis to determine if there are reasonable alternatives, such as trading, permit compliance
8 schedules, or the alternatives provided in subsections (5), (10), and (11), that preclude the need for the
9 individual nutrient standards variance.

10 (4) Individual nutrient standards variances approved by the department become effective and may be
11 incorporated into a permit only after a public hearing and adoption by the department under the rulemaking
12 procedures of Title 2, chapter 4, part 3.

13 (5) (a) Because the treatment of wastewater to base numeric nutrient standards would result in
14 substantial and widespread economic impacts on a statewide basis, a permittee who meets the requirements
15 established in subsection (5)(b) may, subject to subsection (6), apply for a general nutrient standards variance.

16 (b) The department shall approve the use of a general nutrient standards variance for permittees with
17 wastewater treatment facilities that discharge to surface water:

18 (i) in an amount greater than or equal to 1 million gallons per day of effluent if the permittee treats the
19 discharge to, at a minimum, 1 milligram total phosphorus per liter and 10 milligrams total nitrogen per liter,
20 calculated as a monthly average during the period in which the base numeric nutrient standards apply;

21 (ii) in an amount less than 1 million gallons per day of effluent if the permittee treats the discharge to,
22 at a minimum, 2 milligrams total phosphorus per liter and 15 milligrams total nitrogen per liter, calculated as a
23 monthly average during the period in which the base numeric nutrient standards apply; or

24 (iii) from lagoons that were not designed to actively remove nutrients if the permittee maintains the
25 performance of the lagoon at a level equal to the performance of the lagoon on October 1, 2011.

26 (6) (a) The monthly average concentrations for total nitrogen and total phosphorus in subsection
27 (5)(b) are the highest concentrations allowed in each category and remain in effect until May 31, 2016.

28 (b) Categories and concentrations in subsection (5)(b) must be adopted by rule by May 31, 2016.

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1 (7) (a) Immediately after May 31, 2016, and every 3 years thereafter, the department, in consultation
2 with the nutrient work group, shall revisit and update the concentration levels provided in subsection (5)(b).
3 (b) If more cost-effective and efficient treatment technologies are available, the concentration levels
4 provided in subsection (5)(b) must be updated pursuant to subsection (7)(c) to reflect those changes.
5 (c) The updates become effective and may be incorporated into a permit only after a public hearing
6 and adoption by the department under the rulemaking procedures of Title 2, chapter 4, part 3.
7 (8) An individual, general, or alternative nutrient standards variance may be established for a period
8 not to exceed 20 years and must be reviewed by the department every 3 years from the date of adoption to
9 ensure that the justification for its adoption remains valid.
10 (9) (a) Permittees receiving an individual, general, or alternative nutrient standards variance shall
11 evaluate current facility operations to optimize nutrient reduction with existing infrastructure and shall analyze
12 cost-effective methods of reducing nutrient loading, including but not limited to nutrient trading without
13 substantial investment in new infrastructure.
14 (b) The department may request that a permittee provide the results of an optimization study and
15 nutrient reduction analysis to the department within 2 years of receiving an individual, general, or alternative
16 nutrient variance.
17 (10) (a) A permittee may request that the department provide an alternative nutrient standards
18 variance if the permittee demonstrates that achieving nutrient concentrations established for an individual or
19 general nutrient standards variance would result in an insignificant reduction of instream nutrient loading.
20 (b) A permittee receiving an alternative nutrient standards variance shall comply with the
21 requirements of subsections (8) and (9) and shall demonstrate that the permittee's contribution to nutrient
22 concentrations in the watershed continues to remain insignificant.
23 (11) The department shall encourage the use of alternative effluent management methods to reduce
24 instream nutrient loading, including reuse, recharge, land application, and trading.
25 (12) On or before July 1 of each year, the department, in consultation with the nutrient work group,
26 shall report to the water policy committee established in 5-5-231 by providing a summary of the status of the
27 base numeric nutrient standards, the nutrient standards variances, and the implementation of those standards
28 and variances, including estimated economic impacts.

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1 (13) On or before September 1 of each year preceding the convening of a regular session of the
2 legislature, the department, in consultation with the nutrient work group, shall summarize the two most recent
3 reports provided under subsection (12) and submit to the water policy committee established in 5-5-231 this
4 final summary in accordance with 5-11-210."
5

6 **Section 54.** ~~Section 75-5-314, MCA, is amended to read:~~

7 ~~"75-5-314. Confidentiality of base numeric standards and nutrient standards variances. (1)~~

8 ~~Except as provided in 80-15-108 and subsection (2) of this section, information concerning base numeric~~
9 ~~nutrient standards or nutrient standards variances that is furnished to the board or department or that is~~
10 ~~obtained by either of them the department is a matter of public record and open to public use.~~

11 ~~(2) Information unique to the owner or operator of a source of a discharge related to base numeric~~
12 ~~nutrient standards or nutrient standards variances that would, if disclosed, reveal methods or processes entitled~~
13 ~~to protection as trade secrets as defined in 30-14-402 must be maintained as confidential if so determined by a~~
14 ~~court of competent jurisdiction.~~

15 ~~(3) (a) The owner or operator shall file a declaratory judgment action to establish the existence of a~~
16 ~~trade secret if the owner or operator wishes the information to remain confidential.~~

17 ~~(b) The department must be served in the action and may intervene as a party.~~

18 ~~(c) Information not intended to be public when submitted to the board or department must be~~
19 ~~submitted in writing and clearly marked as confidential."~~
20

21 **Section 55.** Section 75-5-315, MCA, is amended to read:

22 **"75-5-315. Outstanding resource waters -- statement of purpose.** (1) The legislature,

23 understanding the requirements of applicable federal law and the uniqueness of Montana's water resource,
24 recognizes that certain state waters are of such environmental, ecological, or economic value that the state
25 should, upon a showing of necessity, prohibit, to the greatest extent practicable, changes to the existing water
26 quality of those waters. Outstanding resource waters must be afforded the greatest protection feasible under
27 state law, after thorough examination.

28 (2) The purpose of 75-5-316 and this section is to provide this protection, when necessary, and to

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1 provide guidance to the ~~board-department~~ in establishing rules to accomplish that level of protection."

2

3 **Section 56.** Section 75-5-316, MCA, is amended to read:

4 **"75-5-316. Outstanding resource water classification -- rules -- criteria -- limitations --**

5 **procedure -- definition.** (1) As provided under the provisions of 75-5-301 and this section, the ~~board~~
6 ~~department~~ may adopt rules regarding the classification of waters as outstanding resource waters.

7 (2) The department may not:

8 (a) grant an authorization to degrade under 75-5-303 in outstanding resource waters; or

9 (b) allow a new or increased point source discharge that would result in a permanent change in the
10 water quality of an outstanding resource water.

11 (3) (a) A person may petition the ~~board-department~~ for rulemaking to classify state waters as
12 outstanding resource waters. The ~~board-department~~ shall initially review a petition against the criteria identified
13 in subsection (3)(c) to determine whether the petition contains sufficient credible information for the ~~board~~
14 ~~department~~ to accept the petition.

15 (b) The ~~board-department~~ may reject a petition without further review if it determines that the petition
16 does not contain the sufficient credible information required by subsection (3)(a). If the ~~board-department~~
17 rejects a petition under this subsection (3)(b), it shall specify in writing the reasons for the rejection and the
18 petition's deficiencies.

19 (c) The ~~board-department~~ may not adopt a rule classifying state waters as outstanding resource
20 waters until it accepts a petition and makes a written finding containing the provisions enumerated in subsection
21 (3)(d) that, based on a preponderance of the evidence:

22 (i) the waters identified in the petition constitute an outstanding resource based on the criteria
23 provided in subsection (4);

24 (ii) the increased protection under the classification is necessary to protect the outstanding resource
25 identified under subsection (3)(a) because of a finding that the outstanding resource is at risk of having one or
26 more of the criteria provided in subsection (4) compromised as a result of pollution; and

27 (iii) classification as an outstanding resource water is necessary because of a finding that there is no
28 other effective process available that will achieve the necessary protection.

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1 (d) The written finding provided for in subsection (3)(c) must:

2 (i) identify the criteria provided in subsection (4) that the ~~board-believes-serve-serve~~ as justification for
3 the determination that the water is an outstanding resource;

4 (ii) specifically identify the criteria that are at risk and explain why those criteria are at risk; and

5 (iii) specifically explain why other available processes, including the requirements of 75-5-303, will not
6 achieve the necessary protection.

7 (4) The ~~board-department~~ shall consider the following criteria in determining whether certain state
8 waters are outstanding resource waters. However, the ~~board-department~~ may determine that compliance with
9 one or more of these criteria is insufficient to warrant classification of the water as an outstanding resource
10 water. The ~~board-department~~ shall consider:

11 (a) whether the waters have been designated as wild and scenic;

12 (b) the presence of endangered or threatened species in the waters;

13 (c) the presence of an outstanding recreational fishery in the waters;

14 (d) whether the waters provide the only source of suitable water for a municipality or industry;

15 (e) whether the waters provide the only source of suitable water for domestic water supply; and

16 (f) other factors that indicate outstanding environmental or economic values not specifically
17 mentioned in this subsection (4).

18 (5) Before accepting a petition, the ~~board-department~~ shall:

19 (a) publish a notice and brief description of the petition in a daily newspaper of general circulation in
20 the area affected and make copies of the proposal available to the public. The cost of publication must be paid
21 by the petitioner.

22 (b) provide for a 30-day written public comment period regarding whether the petition contains
23 sufficient credible information, as provided in subsection (3)(b), prior to the hearing required in subsection
24 (5)(c);

25 (c) hold a public hearing regarding the petition and its contents and allow further written and oral
26 testimony at the hearing;

27 (d) issue a proposed decision, including:

28 (i) the written finding provided for in subsection (3)(c); and

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- 1 (ii) the ~~board's-department's~~ acceptance or rejection of the petition;
- 2 (e) provide for a 30-day public comment period regarding the ~~board's-department's~~ proposed
- 3 decision; and
- 4 (f) issue a final decision on acceptance or rejection of the petition, which must include a response to
- 5 comments ~~that were received~~ by the ~~board, department,~~ and make copies of this decision available to the
- 6 public.
- 7 (6) (a) After acceptance of a petition, the ~~board shall direct the~~ department ~~to shall~~ prepare an
- 8 environmental impact statement, as provided under Title 75, chapter 1, part 2, and this section.
- 9 (b) (i) The petitioner is responsible for all of the costs associated with gathering and compiling data
- 10 and information, and completing the environmental impact statement.
- 11 (ii) Before the department may initiate work on the environmental impact statement, the petitioner shall
- 12 pay the estimated cost of completing the environmental impact statement, as determined by the department.
- 13 (iii) Upon completion of the environmental impact statement, the petitioner shall pay the department
- 14 any costs that exceeded the estimated cost. If the cost of the environmental impact statement was less than the
- 15 estimated cost paid by the petitioner, the department shall reimburse the difference to the petitioner.
- 16 (iv) The ~~board-department~~ may not grant or deny a petition until full payment for the environmental
- 17 impact statement ~~has been is~~ received by the department.
- 18 (7) The ~~board-department~~ shall consult with other relevant state agencies and county governments
- 19 when reviewing outstanding resource water classification petitions.
- 20 (8) (a) After completion of an environmental impact statement and consultation with state agencies
- 21 and local governments, the ~~board-department~~ may deny an accepted outstanding resource water classification
- 22 petition if it finds that:
- 23 (i) the requirements of subsection (3)(c) have not been met; or
- 24 (ii) based on information available to the ~~board-department~~ from the environmental impact statement or
- 25 otherwise, approving the outstanding resource waters classification petition would cause significant adverse
- 26 environmental, social, or economic impacts.
- 27 (b) If the ~~board-department~~ denies the petition, it shall identify its reasons for petition denial.
- 28 (c) If the ~~board-department~~ grants the petition, the ~~board-department~~ shall initiate rulemaking to

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- 1 classify the waters as outstanding resource waters.
- 2 (9) A rule classifying state waters as outstanding resource waters under this section may be adopted
- 3 but is not effective until approved by the legislature.
- 4 (10) The ~~board-department~~ may not postpone or deny an application for an authorization to degrade
- 5 state waters under 75-5-303 based on pending:
- 6 (a) ~~board department~~ action on an outstanding resource water classification petition regarding those
- 7 waters; or
- 8 (b) legislative approval of ~~board-department~~ action designating those waters as outstanding resource
- 9 waters.
- 10 (11) As used in this section, "petitioner" means an individual, corporation, partnership, firm,
- 11 association, or other private or public entity that petitions the ~~board-department~~ to adopt rules to classify waters
- 12 as outstanding resource waters."
- 13
- 14 **Section 57.** Section 75-5-318, MCA, is amended to read:
- 15 **"75-5-318. Short-term water quality standards for turbidity.** (1) Upon authorization by the
- 16 department or the department of fish, wildlife, and parks pursuant to subsection (4), the short-term water quality
- 17 standards for total suspended sediment and turbidity resulting from stream-related construction activities or
- 18 stream enhancement projects are the narrative standards for total suspended sediment adopted by the ~~board~~
- 19 ~~department~~ under 75-5-301. If a short-term narrative standard is authorized under this section, the numeric
- 20 standard for turbidity adopted by the ~~board-department~~ under 75-5-301 does not apply to the affected water
- 21 body during the term of the narrative standard.
- 22 (2) The department shall review each application for short-term standards on a case-by-case basis to
- 23 determine whether there are reasonable alternatives that preclude the need for a narrative standard. If the
- 24 department determines that the numeric standard for turbidity adopted ~~by the board~~ under 75-5-301 cannot be
- 25 achieved during the term of the activity and that there are no reasonable alternatives to achieve the numeric
- 26 standard, the department may authorize the use of a narrative standard for a specified term.
- 27 (3) Each authorization issued by the department must include conditions that minimize, to the extent
- 28 practicable, the magnitude of any change in water quality and the length of time during which any change may

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1 occur. The authorization must also include site-specific conditions that ensure that the activity is not harmful,
2 detrimental, or injurious to public health and the uses of state waters and that ensure that existing and
3 designated beneficial uses of state water are protected and maintained upon completion of the activity. The
4 department may not authorize short-term narrative standards for activities requiring a discharge permit under
5 rules adopted by the board pursuant to 75-5-401. Authorizations issued under this section may include
6 conditions that require water quality or quantity monitoring and reporting.

7 (4) In the performance of its responsibilities under this section, the department may negotiate
8 operating agreements with other departments of state government that are intended to minimize duplication in
9 review of activities eligible for authorizations under this section. The department of fish, wildlife, and parks may,
10 in accordance with subsections (1), (2), and (3), authorize short-term water quality standards for total
11 suspended sediment and turbidity for any stream construction project that it reviews under Title 75, chapter 7,
12 part 1, or Title 87, chapter 5, part 5."

13

14 **Section 58.** Section 75-5-401, MCA, is amended to read:

15 **"75-5-401. (Temporary) Board rules-Rules for permits -- ground water exclusions.** (1) Except as
16 provided in subsection (5), the ~~board~~department shall adopt rules:

17 (a) governing application for permits to discharge sewage, industrial wastes, or other wastes into
18 state waters, including rules requiring the filing of plans and specifications relating to the construction,
19 modification, or operation of disposal systems;

20 (b) governing the issuance, denial, modification, or revocation of permits. The ~~board~~department may
21 not require a permit for a water conveyance structure or for a natural spring if the water discharged to state
22 waters does not contain industrial waste, sewage, or other wastes. Discharge to surface water of ground water
23 that is not altered from its ambient quality does not constitute a discharge requiring a permit under this part if:

24 (i) the discharge does not contain industrial waste, sewage, or other wastes;

25 (ii) the water discharged does not cause the receiving waters to exceed applicable standards for any
26 parameters; and

27 (iii) to the extent that the receiving waters in their ambient state exceed standards for any parameters,
28 the discharge does not increase the concentration of the parameters.

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1 (c) governing authorization to discharge under a general permit for storm water associated with
2 construction activity. These rules must allow an owner or operator to notify the department of the intent to be
3 covered under the general permit. This notice of intent must include a signed pollution prevention plan that
4 requires the applicant to implement best management practices in accordance with the general permit. The
5 rules must authorize the owner or operator to discharge under the general permit on receipt of the notice and
6 plan by the department.

7 (2) The rules must allow the issuance or continuance of a permit only if the department finds that
8 operation consistent with the limitations of the permit will not result in pollution of any state waters, except that
9 the rules may allow the issuance of a temporary permit under which pollution may result if the department
10 ensures that the permit contains a compliance schedule designed to meet all applicable effluent standards and
11 water quality standards in the shortest reasonable period of time.

12 (3) The rules must provide that the department may revoke a permit if the department finds that the
13 holder of the permit has violated its terms, unless the department also finds that the violation was accidental
14 and unforeseeable and that the holder of the permit corrected the condition resulting in the violation as soon as
15 was reasonably possible.

16 (4) The ~~board~~department may adopt rules governing reclamation of sites disturbed by construction,
17 modification, or operation of permitted activities for which a bond is voluntarily filed by a permittee pursuant to
18 75-5-405, including rules for the establishment of criteria and procedures governing release of the bond or other
19 surety and release of portions of a bond or other surety.

20 (5) Discharges of sewage, industrial wastes, or other wastes into state ground waters from the
21 following activities or operations are not subject to the ground water permit requirements adopted under
22 subsections (1) through (4):

23 (a) discharges or activities at wells injecting fluids associated with oil and gas exploration and
24 production regulated under the federal underground injection control program;

25 (b) disposal by solid waste management systems licensed pursuant to 75-10-221;

26 (c) individuals disposing of their own normal household wastes on their own property;

27 (d) hazardous waste management facilities permitted pursuant to 75-10-406;

28 (e) water injection wells, reserve pits, and produced water pits used in oil and gas field operations and

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- 1 approved pursuant to Title 82, chapter 11;
- 2 (f) agricultural irrigation facilities;
- 3 (g) storm water disposal or storm water detention facilities;
- 4 (h) subsurface disposal systems for sanitary wastes serving individual residences;
- 5 (i) in situ mining of uranium facilities controlled under Title 82, chapter 4, part 2;
- 6 (j) mining operations subject to operating permits or exploration licenses in compliance with The Strip
- 7 and Underground Mine Reclamation Act, Title 82, chapter 4, part 2, or the metal mine reclamation laws, Title
- 8 82, chapter 4, part 3; or
- 9 (k) projects reviewed under the provisions of the Montana Major Facility Siting Act, Title 75, chapter
- 10 20.
- 11 (6) Notwithstanding the provisions of 75-5-301(4), mixing zones for activities excluded from permit
- 12 requirements under subsection (5) of this section must be established by the permitting agency for those
- 13 activities in accordance with 75-5-301(4)(a) through (4)(c).
- 14 (7) Notwithstanding the exclusions set forth in subsection (5), any excluded source that the
- 15 department determines may be causing or is likely to cause violations of ground water quality standards may be
- 16 required to submit monitoring information pursuant to 75-5-602.
- 17 (8) The ~~board-department~~ may adopt rules identifying other activities or operations from which a
- 18 discharge of sewage, industrial wastes, or other wastes into state ground waters is not subject to the ground
- 19 water permit requirements adopted under subsections (1) through (4).
- 20 (9) The ~~board-department~~ may adopt rules authorizing general permits for categories of point source
- 21 discharges. The rules may authorize discharge upon issuance of an individual authorization by the department
- 22 or upon receipt of a notice of intent to be covered under the general permit.
- 23 **75-5-401. (Effective on occurrence of contingency) Board-rules-Rules for permits -- ground**
- 24 **water exclusions.** (1) Except as provided in subsection (5), the ~~board-department~~ shall adopt rules:
- 25 (a) governing application for permits to discharge sewage, industrial wastes, or other wastes into
- 26 state waters, including rules requiring the filing of plans and specifications relating to the construction,
- 27 modification, or operation of disposal systems;
- 28 (b) governing the issuance, denial, modification, or revocation of permits. The ~~board-department~~ may

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- 1 not require a permit for a water conveyance structure or for a natural spring if the water discharged to state
- 2 waters does not contain industrial waste, sewage, or other wastes. Discharge to surface water of ground water
- 3 that is not altered from its ambient quality does not constitute a discharge requiring a permit under this part if:
- 4 (i) the discharge does not contain industrial waste, sewage, or other wastes;
- 5 (ii) the water discharged does not cause the receiving waters to exceed applicable standards for any
- 6 parameters; and
- 7 (iii) to the extent that the receiving waters in their ambient state exceed standards for any parameters,
- 8 the discharge does not increase the concentration of the parameters.
- 9 (c) governing authorization to discharge under a general permit for storm water associated with
- 10 construction activity. These rules must allow an owner or operator to notify the department of the intent to be
- 11 covered under the general permit. This notice of intent must include a signed pollution prevention plan that
- 12 requires the applicant to implement best management practices in accordance with the general permit. The
- 13 rules must authorize the owner or operator to discharge under the general permit on receipt of the notice and
- 14 plan by the department.
- 15 (2) The rules must allow the issuance or continuance of a permit only if the department finds that
- 16 operation consistent with the limitations of the permit will not result in pollution of any state waters, except that
- 17 the rules may allow the issuance of a temporary permit under which pollution may result if the department
- 18 ensures that the permit contains a compliance schedule designed to meet all applicable effluent standards and
- 19 water quality standards in the shortest reasonable period of time.
- 20 (3) The rules must provide that the department may revoke a permit if the department finds that the
- 21 holder of the permit has violated its terms, unless the department also finds that the violation was accidental
- 22 and unforeseeable and that the holder of the permit corrected the condition resulting in the violation as soon as
- 23 was reasonably possible.
- 24 (4) The ~~board-department~~ may adopt rules governing reclamation of sites disturbed by construction,
- 25 modification, or operation of permitted activities for which a bond is voluntarily filed by a permittee pursuant to
- 26 75-5-405, including rules for the establishment of criteria and procedures governing release of the bond or other
- 27 surety and release of portions of a bond or other surety.
- 28 (5) Discharges of sewage, industrial wastes, or other wastes into state ground waters from the

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1 following activities or operations are not subject to the ground water permit requirements adopted under
2 subsections (1) through (4):
3 (a) discharges or activities at wells injecting fluids associated with oil and gas exploration and
4 production regulated under the federal underground injection control program;
5 (b) disposal by solid waste management systems licensed pursuant to 75-10-221;
6 (c) individuals disposing of their own normal household wastes on their own property;
7 (d) hazardous waste management facilities permitted pursuant to 75-10-406;
8 (e) water injection wells, reserve pits, and produced water pits used in oil and gas field operations and
9 approved pursuant to Title 82, chapter 11;
10 (f) agricultural irrigation facilities;
11 (g) storm water disposal or storm water detention facilities;
12 (h) subsurface disposal systems for sanitary wastes serving individual residences;
13 (i) in situ mining of uranium facilities controlled under Title 82, chapter 4, part 2;
14 (j) mining operations subject to operating permits or exploration licenses in compliance with The Strip
15 and Underground Mine Reclamation Act, Title 82, chapter 4, part 2, or the metal mine reclamation laws, Title
16 82, chapter 4, part 3;
17 (k) projects reviewed under the provisions of the Montana Major Facility Siting Act, Title 75, chapter
18 20; or
19 (l) a carbon dioxide injection well for which a permit has been issued pursuant to Title 82, chapter 11,
20 part 1.
21 (6) Notwithstanding the provisions of 75-5-301(4), mixing zones for activities excluded from permit
22 requirements under subsection (5) of this section must be established by the permitting agency for those
23 activities in accordance with 75-5-301(4)(a) through (4)(c).
24 (7) Notwithstanding the exclusions set forth in subsection (5), any excluded source that the
25 department determines may be causing or is likely to cause violations of ground water quality standards may be
26 required to submit monitoring information pursuant to 75-5-602.
27 (8) The ~~board~~department may adopt rules identifying other activities or operations from which a
28 discharge of sewage, industrial wastes, or other wastes into state ground waters is not subject to the ground

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1 water permit requirements adopted under subsections (1) through (4).
2 (9) The ~~board~~department may adopt rules authorizing general permits for categories of point source
3 discharges. The rules may authorize discharge upon issuance of an individual authorization by the department
4 or upon receipt of a notice of intent to be covered under the general permit."
5
6 **Section 59.** Section 75-5-402, MCA, is amended to read:
7 **"75-5-402. Duties of department.** The department shall:
8 (1) issue, suspend, revoke, modify, or deny permits to discharge sewage, industrial wastes, or other
9 wastes into state waters, consistently with rules made by the ~~board~~department;
10 (2) examine plans and other information needed to determine whether a permit should be issued or
11 suggest changes in plans as a condition to the issuance of a permit;
12 (3) clearly specify in any permit any limitations imposed as to the volume, strength, and other
13 significant characteristics of the waste to be discharged; and
14 (4) establish as conditions to the issuance of permits for which a performance bond or other surety is
15 filed under 75-5-405 certain reclamation requirements sufficient to prevent pollution of state waters during and
16 after operation of the project or activity for which a permit is issued."
17
18 **Section 60.** ~~Section 75-5-403, MCA, is amended to read:~~
19 ~~"75-5-403.—Denial or modification of permit — time for review of permit application.—(1) The~~
20 ~~department shall review for completeness all applications for new permits within 60 days of the receipt of the~~
21 ~~initial application and within 30 days of receipt of responses to notices of deficiencies. The initial completeness~~
22 ~~notice must note all major deficiency issues, based on the information submitted. The department and the~~
23 ~~applicant may extend these timeframes, by mutual agreement, by not more than 75 days. An application is~~
24 ~~considered complete unless the applicant is notified of a deficiency within the appropriate review period.~~
25 ~~(2)—If the department denies an application for a permit or modifies a permit, the department shall give~~
26 ~~written notice of its action to the applicant or holder and the applicant or holder may request a hearing before~~
27 ~~the board department, in the manner stated in 75-5-611, for the purpose of petitioning the board department to~~
28 ~~reverse or modify the action of the department. The hearing must be held within 30 days after receipt of written~~

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1 request. After the hearing, the board ~~department~~ shall affirm, modify, or reverse the action of the department. If
2 the holder does not request a hearing before the board, modification of a permit is effective 30 days after
3 receipt of notice by the holder unless the department specifies a later date. If the holder does request a hearing
4 before the board, an order modifying the permit is not effective until 20 days after receipt of notice of the action
5 of the board ~~department~~."

7 **Section 61.** Section 75-5-404, MCA, is amended to read:

8 ~~"75-5-404. —Suspension or revocation of permit— procedure. If the department suspends or~~
9 ~~revokes a permit because it has reason to believe that the holder has violated this chapter, the department may~~
10 ~~specify that the suspension or revocation is effective immediately if the department finds that the violation is~~
11 ~~likely to continue and will cause pollution, the harmful effects of which will not be remedied immediately on the~~
12 ~~cessation of the violation. Upon petition by the holder of the permit, the board ~~department~~ shall grant the holder~~
13 ~~a hearing, to be conducted in the manner specified in 75-5-611, and shall issue an order affirming, modifying, or~~
14 ~~reversing the action of the department. The order of the board shall be is effective immediately unless the board~~
15 ~~department directs otherwise."~~

17 **Section 62.** Section 75-5-502, MCA, is amended to read:

18 **"75-5-502. Board Department authorized to accept loans and grants.** The board ~~department~~ may
19 accept loans and grants from the federal government and other sources to carry out the provisions of this
20 chapter."

22 **Section 63.** Section 75-5-514, MCA, is amended to read:

23 **"75-5-514. When board ~~department~~ to establish rates and collect charges.** (1) In the event a
24 municipality or other entity operating sewage systems fails, neglects, or refuses when required by the
25 department to adopt the system of charges and rates authorized by 75-5-511, the board ~~department~~ may adopt
26 a system of charges and rates as provided for in 75-5-511(1) and collect, administer, and apply such revenues
27 for the purposes of 75-5-512.

28 (2) In lieu of proceeding in the manner set forth in subsection (1) of this section, the department may

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1 institute proceedings at law or in equity to enforce compliance with or restrain violations of 75-5-511 through 75-
2 5-513."

4 **Section 64.** Section 75-5-515, MCA, is amended to read:

5 **"75-5-515. Determination of costs payable by users.** In determining the amount of treatment works
6 costs to be paid by recipients of treatment works services, the municipality or other entity operating sewage
7 systems or, if applicable, the board ~~department~~ shall consider the strength, volume, types, and delivery flow
8 rate characteristics of the waste; the nature, location, and type of treatment works; the receiving waters; and
9 such other factors as deemed necessary."

11 **Section 65.** Section 75-5-516, MCA, is amended to read:

12 **"75-5-516. Fees authorized for recovery -- process -- rulemaking.** (1) Except as provided in
13 subsections (12) and (13), the board ~~department~~ shall by rule prescribe fees ~~to be assessed by the department~~
14 ~~that are sufficient~~ to cover the board's and department's documented costs, both direct and indirect, of:

- 15 (a) reviewing and acting upon an application for a permit, permit modification, permit renewal,
16 certificate, license, or other authorization required by rule under 75-5-201 or 75-5-401;
17 (b) reviewing and acting upon a petition for a degradation allowance under 75-5-303;
18 (c) reviewing and acting upon an application for a permit, certificate, license, or other authorization for
19 which an exclusion is provided by rule from the permitting requirements established under 75-5-401;
20 (d) enforcing the terms and conditions of a permit or authorization identified in subsections (1)(a)
21 through (1)(c). If the permit or authorization is not issued, the department shall return this portion of any
22 application fee to the applicant.

- 23 (e) conducting compliance inspections and monitoring effluent and ambient water quality; and
24 (f) preparing water quality rules or guidance documents.
25 (2) Except as provided in subsection (12), the rules promulgated ~~by the board~~ under this section must
26 include:

- 27 (a) a fee on all applications for permits or authorizations, as identified in subsections (1)(a) through
28 (1)(c), that recovers to the extent permitted by this subsection (2) the department's cost of reviewing and acting

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1 upon the applications. This fee may not be more than \$5,000 per discharge point for an application addressed
2 under subsection (1), except that an application with multiple discharge points may be assessed a lower fee for
3 those points according to board rule.

4 (b) an annual fee to be assessed according to the volume and concentration of waste discharged into
5 state waters. The annual fee may not be more than \$3,000 per million gallons discharged per day on an annual
6 average for any activity under permit or authorization, as described in subsection (1), except that:

7 (i) a permit or authorization with multiple discharge points may be assessed a lower fee for those
8 points according to board rule; and

9 (ii) a facility that consistently discharges effluent at less than or equal to one-half of its effluent
10 limitations and that is in compliance with other permit requirements, using the previous calendar year's
11 discharge data, is entitled to a 25% reduction in its annual permit fee. Proportionate reductions of up to 25% of
12 the permit fee may be given to facilities that consistently discharge effluent at levels between 50% and 100% of
13 their effluent limitations. However, a new permittee is not eligible for a fee reduction in its first year of operation,
14 and a permittee with a violation of any effluent limit during the previous calendar year is not eligible for a fee
15 reduction for the following year.

16 (3) To the extent permitted under subsection (2)(b), the annual fee must be sufficient to pay the
17 department's estimated cost of conducting all tasks described under subsection (1) after subtracting:

18 (a) the fees collected under subsection (2)(a);

19 (b) state general fund appropriations for functions administered under this chapter; and

20 (c) federal grants for functions administered under this chapter.

21 (4) For purposes of subsection (3), the department's estimated cost of conducting the tasks described
22 under subsection (1) is the amount authorized by the legislature for the department's water quality discharge
23 permit programs.

24 (5) If the applicant or holder fails to pay a fee assessed under this section or rules adopted under this
25 section within 90 days after the date established by rule for fee payment, the department may:

26 (a) impose an additional assessment consisting of not more than 20% of the fee plus interest on the
27 required fee computed as provided in 15-1-216; or

28 (b) suspend the permit or exclusion. The department may lift the suspension at any time up to 1 year

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1 after the suspension occurs if the holder has paid all outstanding fees, including all penalties, assessments, and
2 interest imposed under subsection (5)(a).

3 (6) Fees collected pursuant to this section must be deposited in an account in the special revenue
4 fund type pursuant to 75-5-517.

5 (7) The department shall give written notice to each person assessed a fee under this section of the
6 amount of fee that is assessed and the basis for the department's calculation of the fee. This notice must be
7 issued at least 30 days prior to the due date for payment of the assessment.

8 (8) A holder of or an applicant for a permit, certificate, or license may appeal the department's fee
9 assessment to the board ~~department board~~ within 20 days after receiving written notice of the department's fee
10 determination under subsection (7). The appeal ~~to the board~~ must include a written statement detailing the
11 reasons that the permitholder or applicant considers the department's fee assessment to be erroneous or
12 excessive.

13 (9) If part of the department's fee assessment is not in dispute in an appeal filed under subsection (8),
14 the undisputed portion of the fee must be paid to the department upon written request of the department.

15 (10) The contested case provisions of the Montana Administrative Procedure Act, provided for in Title
16 2, chapter 4, part 6, apply to a hearing before the board ~~department board~~ under this section.

17 (11) A municipality may raise rates to cover costs associated with the fees prescribed in this section for
18 a public sewer system without the hearing required in 69-7-111.

19 (12) (a) The application fee assessed pursuant to this section for a suction dredge, as described in 82-
20 4-310(2), may not be more than:

21 (i) \$25 if it is owned and operated by a resident of this state; or

22 (ii) \$100 if it is owned and operated by a nonresident of this state.

23 (b) The annual fee assessed pursuant to this section for a suction dredge, as described in 82-4-
24 310(2), may not be more than:

25 (i) \$25 if it is owned and operated by a resident of this state; or

26 (ii) \$100 if it is owned and operated by a nonresident of this state.

27 (13) A county, an incorporated city or town, or a conservation district formed pursuant to Title 76,
28 chapter 15, is not subject to fees for authorizations pursuant to 75-5-318 or certifications related to section 401

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of the federal Clean Water Act, 33 U.S.C. 1341."

Section 66. Section 75-5-611, MCA, is amended to read:

~~"75-5-611. Violation of chapter—administrative actions and penalties—notice and hearing. (1)~~

~~When the department has reason to believe that a violation of this chapter, a rule adopted under this chapter, or a condition of a permit or authorization required by a rule adopted under this chapter has occurred, it may have a written notice letter served personally or by certified mail on the alleged violator or the violator's agent. The notice letter must state:~~

~~(a) the provision of statute, rule, permit, or approval alleged to be violated;~~

~~(b) the facts alleged to constitute the violation;~~

~~(c) the specific nature of corrective action that the department requires;~~

~~(d) as applicable, the amount of the administrative penalty that will be assessed by order under~~

~~subsection (2) if the corrective action is not taken within the time provided under subsection (1)(e); and~~

~~(e) as applicable, the time within which the corrective action is to be taken or the administrative penalty will be assessed. For the purposes of this chapter, service by certified mail is complete on the date of receipt. Except as provided in subsection (2)(a)(ii), an administrative penalty may not be assessed until the provisions of subsection (1) have been complied with.~~

~~(2) (a) The department may issue an administrative notice and order in lieu of the notice letter provided under subsection (1) if the department's action:~~

~~(i) does not involve assessment of an administrative penalty; or~~

~~(ii) seeks an administrative penalty only for an activity that it believes and alleges has violated or is violating 75-5-605.~~

~~(b) A notice and order issued under this section must meet all of the requirements specified in subsection (1).~~

~~(3) In a notice and order given under subsection (1), the department may require the alleged violator to appear before the board for a public hearing and to answer the charges. The hearing must be held no sooner than 15 days after service of the notice and order, except that the board department may set an earlier date for hearing if it is requested to do so by the alleged violator. The board department may set a later date for hearing~~

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~~at the request of the alleged violator if the alleged violator shows good cause for delay.~~

~~(4) If the department does not require an alleged violator to appear before the board for a public hearing, the alleged violator may request the board department to conduct the hearing. The request must be in writing and must be filed with the department no later than 30 days after service of a notice and order under subsection (2). If a request is filed, a hearing must be held within a reasonable time. If a hearing is not requested within 30 days after service upon the alleged violator, the opportunity for a contested case appeal to the board department under Title 2, chapter 4, part 6, is waived.~~

~~(5) If a contested case hearing is held under this section, it must be public and must be held in the county in which the violation is alleged to have occurred or in Lewis and Clark County.~~

~~(6) (a) After a hearing, the board department shall make findings and conclusions that explain its decision.~~

~~(b) If the board department determines that a violation has occurred, it shall also issue an appropriate order for the prevention, abatement, or control of pollution, the assessment of administrative penalties, or both.~~

~~(c) If the order requires abatement or control of pollution, the board department shall state the date or dates by which a violation must cease and may prescribe timetables for necessary action in preventing, abating, or controlling the pollution.~~

~~(d) If the order requires payment of an administrative penalty, the board department shall explain how it determined the amount of the administrative penalty.~~

~~(e) If the board department determines that a violation has not occurred, it shall declare the department's notice void.~~

~~(7) The alleged violator may petition the board department for a rehearing on the basis of new evidence, which petition the board department may grant for good cause shown.~~

~~(8) Instead of issuing an order, the board may direct the department to may initiate appropriate action for recovery of a penalty under 75-5-631, 75-5-632, 75-5-633, or 75-5-635.~~

~~(9) (a) Except as provided in subsection (9)(d), an action initiated under this section may include an administrative penalty of not more than \$10,000 for each day of each violation; however, the maximum penalty may not exceed \$100,000 for any related series of violations.~~

~~(b) Administrative penalties collected under this section must be deposited in the general fund.~~

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(c) ~~In determining the amount of penalty to be assessed to a person, the department and board shall consider the penalty factors in 75-1-1001, rules promulgated under 75-5-201, and subsection (9)(d).~~

(d) ~~A person who commits a violation that adversely affects the department's administration of this chapter, a rule adopted pursuant to this chapter, or a condition of a permit or authorization issued under this chapter but does not harm or have the potential to harm human health, the environment, or the department's ability to protect human health or the environment may not be assessed a penalty of more than \$500 for each day of the violation, not to exceed \$5,000 for all days of the same violation.~~

(e) ~~The contested case provisions of the Montana Administrative Procedure Act, provided for in Title 2, chapter 4, part 6, apply to a hearing conducted under this section."~~

Section 67. ~~Section 75-5-614, MCA, is amended to read:~~

"75-5-614.—Injunctions authorized. (1) ~~Except as provided in 81-9-240, the department is authorized to commence a civil action seeking appropriate relief, including a permanent or temporary injunction, for a violation that would be subject to a compliance order under 75-5-613. An action under this subsection may be commenced in the district court of the county where a violation occurs or is threatened, and the court has jurisdiction to restrain the violation and to require compliance.~~

(2) ~~Except as provided in 81-9-240, the department may bring an action for an injunction against the continuation of an alleged violation of the terms or conditions of a permit issued by the department or any rule or effluent standard promulgated under this chapter or against a person who fails to comply with an emergency order issued by the department under 75-5-621 or a final order of the board department. The court to which the department applies for an injunction may issue a temporary injunction if it finds that there is reasonable cause to believe that the allegations of the department are true, and it may issue a temporary restraining order pending action on the temporary injunction."~~

Section 68. ~~Section 75-5-621, MCA, is amended to read:~~

"75-5-621.—Emergencies. (1) ~~Notwithstanding other provisions of this chapter, if the department finds that a person is committing or is about to commit an act in violation of this chapter or an order or rule issued under this chapter that, if it occurs or continues, will cause substantial pollution the harmful effects of which will~~

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~~not be remedied immediately after the commission or cessation of the act, the department may order the person to stop, avoid, or moderate the act so that the substantial injury will not occur. The order is effective immediately upon receipt by the person to whom it is directed, unless the department provides otherwise.~~

(2) ~~Notice of the order must conform to the requirements of 75-5-611(1) so far as practicable. The notice must indicate that the order is an emergency order.~~

(3) ~~Upon issuing an order, the department shall fix a place and time for a hearing before the board, not later than 5 days after issuing the order unless the person to whom the order is directed requests a later time. The department may deny a request for a later time if it finds that the person to whom the order is directed is not complying with the order. The hearing must be conducted in the manner specified in 75-5-611. As soon as practicable after the hearing, the board department shall affirm, modify, or set aside the order of the department. The order of the board must be accompanied by the information required in 75-5-611(6). An action for review of the order of the board may be initiated in the manner specified in 75-5-641. Except as provided in 81-9-240, the initiation of an action or taking of an appeal may not stay the effectiveness of the order unless the court finds that the board department did not have reasonable cause to issue an order under this section."~~

Section 69. ~~Section 75-5-641, MCA, is amended to read:~~

"75-5-641.—Appeals from board department orders — review by district court. (1) ~~An appeal of an order of the board department must be in the district court of the county in which the alleged source of pollution is located.~~

(2) ~~A person interested in the order may intervene, in the manner provided by the rules of civil procedure, if the person shows good cause. An intervenor is a party for the purposes of this chapter.~~

(3) ~~The attorney general shall represent the board department if requested, or the department may appoint special counsel for the proceedings, subject to the approval of the attorney general.~~

(4) ~~Except as provided in 81-9-240, the initiation of an action for review or the taking of an appeal does not stay the effectiveness of an order of the board unless the court finds that there is probable cause to believe:~~

(a) ~~that refusal to grant a stay will cause serious harm to the affected party; and~~

(b) ~~that a violation found by the board department will not continue or, if it does continue, the harmful~~

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1 effects-on-state-waters-will-be-remedied-immediately-on-the-cessation-of-the-violation.
2 (5)—If a court does not stay the effectiveness of an order of the board, it may enforce compliance with
3 that order by issuing a temporary restraining order or an injunction at the request of the board ~~department.~~
4
5 **Section 70.** Section 75-5-702, MCA, is amended to read:
6 **"75-5-702. —Monitoring —water quality assessment listing —costs payable by department —**
7 **statewide advisory group.** (1) The department shall monitor state waters to assess the quality of those waters
8 and to identify surface water bodies or segments of surface water bodies that are threatened or impaired. The
9 department shall use the monitoring results to revise the list of water bodies that are identified as threatened or
10 impaired and to establish a priority ranking for TMDL development for those waters in accordance with
11 subsections (4) and (7).
12 (2)—In revising the list prepared pursuant to this section, the department shall use all currently
13 available data, including information or data obtained from federal, state, and local agencies, private entities, or
14 individuals with an interest in water quality protection. Except as provided in subsection (6), the department
15 may modify the list only if there is sufficient credible data to support the modification. Prior to publishing a final
16 list, the department shall provide public notice and allow 60 days for public comment on the draft list. The
17 department shall make available for public review, upon request, documentation used in the determination to
18 list or delist a particular water body, including, at a minimum, a description of the information, data, and
19 methodology used. The department may charge a reasonable fee for the documentation, commensurate with
20 the cost of providing the documentation to the requestor.
21 (3)—A person may request that the department add or remove a water body or reprioritize a water
22 body on a draft or published list by providing the data or information necessary to support the request. The
23 department shall review the data within 60 days from its submittal. If the department determines that there is
24 sufficient credible data to grant the request, the department shall provide public notice of its intended action and
25 allow 60 days for public comment prior to taking action on the request. A person aggrieved by the department's
26 decision to grant or deny the request may appeal the department's decision to the board ~~department.~~
27 (4)—The department shall, in consultation with local conservation districts and watershed advisory
28 groups pursuant to 75-5-704, review and revise the list and priority rankings of water bodies identified as

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1 threatened or impaired. The department shall review and revise the list at intervals not to exceed 5 years. The
2 department shall make available for public review the data and information used in making any changes in its
3 list of threatened or impaired water bodies that is developed and maintained pursuant to this section.
4 (5)—By October 1, 1999, and in consultation with the statewide TMDL advisory group established
5 pursuant to subsection (10), the department shall develop and maintain a data management system that can be
6 used to assess the validity and reliability of the data used in the listing and priority ranking process. The
7 department shall make available to the public, upon request, data from its data management system. The
8 department may charge a reasonable fee for the data, commensurate with its cost of providing the data to the
9 requestor.
10 (6)—By October 1, 1999, and in consultation with the statewide TMDL advisory group, the department
11 shall use the data management system developed and maintained pursuant to subsection (5) to revise the list
12 and to remove any water body that lacks sufficient credible data to support its listing. If the department removes
13 a water body because there is a lack of sufficient credible data to support its listing, the department shall
14 monitor and assess that water body during the next field season or as soon as possible thereafter to determine
15 whether it is a threatened water body or an impaired water body.
16 (7)—Except as provided in subsection (9), in prioritizing water bodies for TMDL development, the
17 department shall, in consultation with the statewide TMDL advisory group, take into consideration the following:
18 (a)—the beneficial uses established for a water body;
19 (b)—the extent that natural factors over which humans have no control are contributing to any
20 impairment;
21 (c)—the impacts to human health and aquatic life;
22 (d)—the degree of public interest and support;
23 (e)—the character of the pollutant and the severity and magnitude of water quality standard
24 noncompliance;
25 (f)—whether the water body is an important high-quality resource in an early stage of degradation;
26 (g)—the size of the water body not achieving standards;
27 (h)—immediate programmatic needs, such as waste load allocations for new permits or permit
28 renewals and load allocations for new nonpoint sources;

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1 (i)—court orders and decisions relating to water quality;
2 (j)—state policies and priorities, including the protection and restoration of native fish when appropriate;
3 (k)—the availability of technology and resources to correct the problems;
4 (l)—whether actions or voluntary programs that are likely to correct the impairment of a particular water
5 body are currently in place; and
6 (m)—the recreational, economic, and aesthetic importance of a particular water body.
7 (8)—Except as provided in subsection (9), the department shall, in consultation with the statewide
8 TMDL advisory group, develop a method of rating water bodies according to the criteria and considerations
9 described in subsection (7) in order to rank the listed water bodies as high priority, moderate priority, or low
10 priority for TMDL development. The department may not rank a water body as a high priority under this section
11 without first validating the data necessary to support the ranking.
12 (9)—(a)—When the department receives an application for a new individual permit to discharge into a
13 surface water body or a segment of a surface water body pursuant to 75-5-401, the surface water body or
14 segment of a surface water body has been listed pursuant to subsection (2) of this section, the discharge would
15 contain a pollutant for which the water body or segment is threatened or impaired, and a TMDL has not been
16 developed for that water body or segment, the department shall:
17 (i)—within 30 days of the department's receipt of the application, initiate the development of a TMDL on
18 the water body or segment; and
19 (ii)—except as provided in subsection (9)(b), within 180 days of the department's receipt of the
20 application, complete development of the TMDL pursuant to 75-5-703.
21 (b)—If the department is not able to complete development of the TMDL in accordance with subsection
22 (9)(a)(i), the department shall, within 30 days of the department's receipt of the application, specify in writing to
23 the applicant why the department is not able to complete development of a TMDL in accordance with
24 subsection (9)(a)(i). The department and the applicant shall make reasonable efforts to mutually agree in
25 writing to a timeframe in which the department shall complete development of the TMDL. If the department
26 specifies a lack of resources as a reason why the department cannot complete development of the TMDL in
27 accordance with subsection (9)(a)(i), the department shall clearly explain in its written specification what
28 resources are not available, why those resources are not available, and when those resources will be available.

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1 (c)—If the department and the applicant cannot mutually agree to a timeframe in accordance with
2 subsection (9)(b), the department shall, within 60 days of the department's receipt of the application, specify in
3 writing to the applicant the timeframe in which the TMDL will be completed by the department and the reasons
4 why that timeframe is appropriate. If the department specifies a lack of resources as a reason why the
5 department's timeframe is appropriate, the department may request the applicant provide funding for the
6 development of the TMDL in order to accelerate the completion of the TMDL.
7 (d)—The applicant may, within 15 days of the department's written specification provided in accordance
8 with subsection (9)(c), request in writing a hearing before the board department for the purpose of petitioning
9 the board to reverse or modify the department's decision. The contested case provisions of the Montana
10 Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing before the board under this
11 subsection. If the parties to the contested case waive a formal proceeding pursuant to 2-4-603, the informal
12 proceeding must be conducted within 30 days after the board's receipt of the written request. After the hearing
13 and in a reasonable time, the board department shall affirm, modify, or reverse the its action of the department,
14 and the board shall make findings and conclusions that explain its decision. Pending the board's decision, the
15 department shall develop the TMDL in accordance with the timeframe specified in subsection (9)(a)(ii).
16 (e)—The department may not declare an application incomplete or deficient because a TMDL has not
17 been prepared.
18 (f)—If on April 27, 2015, an application for a new individual permit to discharge into a surface water
19 body or a segment of a surface water body pursuant to 75-5-401 is pending, the surface water body or segment
20 of a surface water body has been listed pursuant to subsection (2) of this section, the discharge would contain
21 a pollutant for which the water body or segment is threatened or impaired, and a TMDL has not been developed
22 for the water body or segment, the department shall, except as provided in subsection (9)(g), complete a TMDL
23 for the water body or segment within 180 days of April 27, 2015.
24 (g)—If the department is not able to complete development of the TMDL within 180 days of April 27,
25 2015, pursuant to subsection (9)(f), then the timeframes established in accordance with subsections (9)(b),
26 (9)(c), and (9)(d) apply to the application, but the timeframes are measured from April 27, 2015, not from the
27 date the department receives an application.
28 (10)—(a)—The department shall establish a statewide TMDL advisory group to serve in the consultation

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1 capacity set forth in 75-5-703, 75-5-704, and this section. Fourteen members, and any replacement members
2 that may be necessary, must be appointed by the director, based upon one nomination from each of the
3 following interests:
4 (i) —livestock-oriented agriculture;
5 (ii) —farming-oriented agriculture;
6 (iii) —conservation or environmental interests;
7 (iv) —water-based recreationists;
8 (v) —the forestry industry;
9 (vi) —municipalities;
10 (vii) —point source dischargers;
11 (viii) —mining;
12 (ix) —federal land management agencies;
13 (x) —state trust land management agencies;
14 (xi) —supervisors of soil and water conservation districts for counties east of the continental divide;
15 (xii) —supervisors of soil and water conservation districts for counties west of the continental divide;
16 (xiii) —the hydroelectric industry; and
17 (xiv) —fishing-related businesses.
18 (b) —If the director receives more than one nomination from a particular interest, the director shall notify
19 the respective nominators and request that they agree on one nominee.
20 (14) —The department shall provide public notice of meetings of the statewide TMDL advisory group and
21 shall solicit, document, and consider public comments provided during the deliberations of the advisory group."

22
23 **Section 71.** Section 75-5-802, MCA, is amended to read:

24 **"75-5-802. Permitting -- concentrated animal feeding operation.** (1) For the purpose of permitting
25 concentrated animal feeding operations, the ~~board~~ department shall adopt, by reference, the federal regulations
26 and definitions contained in 40 CFR, parts 122.23 and 412.

27 (2) Subject to the provisions of subsection (3), concentrated animal feeding operations that meet the
28 requirements of 40 CFR, part 412, must be authorized by the department under a general permit.

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1 (3) If, upon review of an application for a general permit authorization for a concentrated animal
2 feeding operation production area, the department discovers site-specific information that indicates that a
3 general permit authorization is not sufficiently protective of water quality, the department shall require an
4 individual permit."

5
6 **Section 72.** Section 75-6-102, MCA, is amended to read:

7 **"75-6-102. Definitions.** As used in this part, unless the context clearly indicates otherwise, the
8 following definitions apply:

9 (1) —"Board" means the board of environmental review provided for in 2-15-3502.

10 (2)(1) —"Certified source water protection area" means an area certified by the department that
11 identifies the surface and subsurface area surrounding a source of water for a public water supply system
12 through which contaminants may move toward and reach the source of supply.

13 (3)(2) —"Community water system" means a public water supply system that serves at least 15 service
14 connections used by year-round residents or that regularly serves at least 25 year-round residents.

15 (4)(3) —"Contamination" means impairment of the quality of state waters by sewage, industrial waste, or
16 other waste creating a hazard to human health.

17 (5)(4) —"Cross connection" means a connection between a public water supply system and another
18 water supply system, either public or private, or a wastewater or sewerline or other potential source of
19 contamination so that a flow of water into or contamination of the public water supply system from the other
20 source of water or contamination is possible.

21 (6)(5) —"Department" means the department of environmental quality provided for in 2-15-3501.

22 (7)(6) —"Drainage" means rainfall, surface, and subsoil water.

23 (8)(7) —"Industrial waste" means any waste substance from the processes of business or industry or
24 from the development of a natural resource, together with any sewage that may be present.

25 (9)(8) —"Maximum contaminant level" means the maximum permissible level of a contaminant in water
26 that is delivered to a user of a public water supply system.

27 (10)(9) —"Other waste" means garbage, municipal refuse, decayed wood, sawdust, shavings, bark, lime,
28 sand, ashes, offal, night soil, oil, grease, tar, heat, chemicals, dead animals, sediment, wrecked or discarded

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1 equipment, radioactive materials, solid waste, and all other substances that may pollute state waters.
2 ~~(11)(10)~~ "Person" means an individual, firm, partnership, company, association, corporation, city, town,
3 local government entity, federal agency, or any other governmental or private entity, whether organized for
4 profit or not.
5 ~~(12)(11)~~ (a) "Pollution" means contamination or other alteration of the physical, chemical, or biological
6 properties of state waters that exceeds that which is permitted by Montana water quality standards, including
7 but not limited to standards relating to change in temperature, taste, color, turbidity, or odor or the discharge or
8 introduction of a liquid, gaseous, solid, radioactive, or other substance into state water that will or is likely to
9 create a nuisance or render the waters harmful, detrimental, or injurious to public health, recreation, safety, or
10 welfare, to livestock, or to wild animals, birds, fish, or other wildlife.
11 ~~(b)~~—A discharge that is authorized under the pollution discharge permit rules of the board department
12 is not pollution under this chapter.
13 ~~(13)(12)~~ "Public sewage system" means a system of collection, transportation, treatment, or disposal of
14 sewage that serves 15 or more families or 25 or more persons daily for any 60 or more days in a calendar year.
15 ~~(14)(13)~~ "Public water supply system" means a system for the provision of water for human
16 consumption from a community well, water hauler for cisterns, water bottling plant, water dispenser, or other
17 water supply that has at least 15 service connections or that regularly serves at least 25 persons daily for any
18 60 or more days in a calendar year.
19 ~~(15)(14)~~ "Reclaimed wastewater" means wastewater that is treated by a public sewage system for
20 reuse for private, public, or commercial purposes.
21 ~~(16)(15)~~ "Safe Drinking Water Act" means 42 U.S.C. 300f and regulations set forth in 40 CFR, parts
22 141 and 142.
23 ~~(17)(16)~~ "Sewage" means water-carried waste products from residences, public buildings, institutions,
24 or other buildings, including discharge from human beings, together with ground water infiltration and surface
25 water present.
26 ~~(18)(17)~~ "Source water protection program" means a program administered by the department to
27 certify source water protection delineation and assessment reports and source water protection plans and to
28 review source water protection ordinances.

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1 ~~(19)(18)~~ "State waters" means a body of water, irrigation system, or drainage system, either surface or
2 underground.
3 ~~(20)(19)~~ "Transient noncommunity water system" means a public water supply system that is not a
4 community water system and that does not regularly serve at least 25 of the same persons for at least 6
5 months a year."
6
7 **Section 73.** Section 75-6-104, MCA, is amended to read:
8 **"75-6-104. Duties of department.** (1) The department has general supervision over all state waters
9 that are directly or indirectly being used by a person for a public water supply system, for domestic purposes, or
10 as a source of ice.
11 (2) The department shall, subject to the provisions of 75-6-116 and as provided in 75-6-131, adopt
12 rules and standards concerning:
13 (a) maximum contaminant levels for waters that are or will be used for a public water supply system;
14 (b) fees, as described in 75-6-108, for services rendered by the department;
15 (c) monitoring, recordkeeping, and reporting by persons who own or operate public water supply
16 systems;
17 (d) requiring public notice to all users of a public water supply system when a person has been
18 granted a variance or exemption or is in violation of this part or a rule or order issued pursuant to this part;
19 (e) the siting, construction, operation, and modification of a public water supply system or public
20 sewage system, including requirements to remedy;
21 (i) defects in the design, operation, or maintenance of a public water supply system or public sewage
22 system in order to prevent or correct introduction of contamination into water used for a public water supply
23 system, for domestic purposes, or as a source of ice;
24 (ii) fecal contamination in water used by a public water supply system; or
25 (iii) failure or malfunction of the sources, treatment, storage, or distribution portion of a public water
26 supply system in order to prevent or correct introduction of contamination into water used for a public water
27 supply system, for domestic purposes, or as a source of ice;
28 (f) the review of the technical, managerial, and financial capacity of a proposed public water supply

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1 system or public sewage system, as necessary to ensure the capability of the system to meet the requirements
2 of this part:
3 (g) the collection and analysis of samples of water used for drinking or domestic purposes;
4 (h) the issuance of variances and exemptions as authorized by the federal Safe Drinking Water Act
5 and this part;
6 (i) administrative enforcement procedures and administrative penalties authorized under this part;
7 (j) standards and requirements for the review and approval of programs that may be voluntarily
8 submitted by suppliers of public water supply systems to prevent water supply contamination from a cross-
9 connection, including provisions to exempt cross-connections from the standards and requirements if all
10 connected systems are department-approved public water supply systems;
11 (k) (i) allowable uses of reclaimed wastewater and classification of those uses;
12 (ii) treatment, monitoring, recordkeeping, and reporting standards and requirements tailored to each
13 classification that must be met by the public sewage system to protect the uses of the reclaimed wastewater
14 and any receiving water;
15 (iii) prohibition of reclaimed wastewater uses that are not allowable under subsection (2)(k)(i) or for
16 which the reclaimed wastewater has not been treated in compliance with rules adopted under subsection
17 (2)(k)(ii); and
18 (iv) a requirement that an applicant who proposes to use reclaimed wastewater pursuant to this
19 subsection (2)(k) has obtained any necessary authorizations required under Title 85 from the department of
20 natural resources and conservation; and
21 (l) any other requirement necessary for the protection of public health as described in this part.
22 (3) Department rules must provide for the following:
23 (a) except as provided in 75-6-131, a water supply or water distribution facility reviewed and approved
24 by the department is not subject to changes in department design and construction criteria for a period of 36
25 months after written approval of the facility is issued by the department;
26 (b) except for facilities subject to permit requirements under Title 75, chapter 5, part 4, and except as
27 provided under rules adopted pursuant to 75-6-131, a system of water supply, drainage, wastewater, or sewage
28 reviewed and approved under this section is not subject to changes in department design or construction

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1 criteria for a period of 36 months after written approval is issued by the department;
2 (c) plans and specifications for a portion of a facility or system subject to a 36-month limit on criteria
3 changes pursuant to subsections (3)(a) and (3)(b) but not constructed within the 36-month timeframe must be
4 resubmitted for department review and approval before construction of that portion of the facility;
5 (d) the provisions of this subsection (3) may not limit an applicant's ability to alter a proposed project
6 that is otherwise in conformance with applicable laws, rules, standards, and criteria.
7 (4) The department or the board may issue orders necessary to fully implement the provisions of this
8 part.
9 (5) The department shall:
10 (4)(a) upon its own initiative or complaint to the department, to the mayor or health officer of a
11 municipality, or to the managing board or officer of a public institution, make an investigation of alleged pollution
12 of a water supply system and, if required, prohibit the continuance of the pollution by ordering removal of the
13 cause of pollution;
14 (2)(b) have waters examined to determine their quality and the possibility that they may endanger
15 public health;
16 (3)(c) consult and advise authorities of cities and towns and persons having or about to construct
17 systems for water supply, drainage, wastewater, and sewage as to the most appropriate source of water supply
18 and the best method of ensuring its quality;
19 (4)(d) advise persons as to the best method of treating and disposing of their drainage, sewage, or
20 wastewater with reference to the existing and future needs of other persons and to prevent pollution;
21 (5)(e) consult with persons engaged in or intending to engage in manufacturing or other business
22 whose drainage or sewage may tend to pollute waters as to the best method of preventing pollution;
23 (6)(f) collect fees, as described in 75-6-108, for services and deposit the fees collected in the public
24 drinking water special revenue fund established in 75-6-115;
25 (7)(g) establish and maintain experiment stations and conduct experiments to study the best methods
26 of treating water, drainage, wastewater, and sewage to prevent pollution, including investigation of methods
27 used in other states;
28 (8)(h) enter on premises at reasonable times to determine sources of pollution or danger to water

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1 supply systems and whether rules and standards of the ~~board~~department are being obeyed;
2 (9)(i) enforce and administer the provisions of this part;
3 (10)(i) establish a plan for the provision of safe drinking water under emergency circumstances;
4 (11)(k) maintain an inventory of public water supply systems and establish a program for conducting
5 sanitary surveys; and
6 (12)(i) enter into agreements with local boards of health whenever appropriate for the performance of
7 surveys and inspections under the provisions of this part."

9 **Section 74.** Section 75-6-105, MCA, is amended to read:

10 **"75-6-105. Records required for wells drilled to supply water to public.** Every person drilling a
11 water well to furnish water for public consumption shall keep a complete record of the depth, thickness, and
12 character of different strata and other information prescribed by the ~~board~~ department. Data shall ~~must~~ be
13 furnished to the department on forms prescribed by it. These data are available to the public at all reasonable
14 times."

16 **Section 75.** Section 75-6-106, MCA, is amended to read:

17 **"75-6-106. Laboratory license required.** A laboratory analysis of water taken from a public water
18 supply system or any report of an analysis required by this part or a rule adopted under this part may not be
19 accepted by the department ~~or board~~ unless the analysis or report is made by the department of public health
20 and human services' laboratory or by a laboratory licensed by the department of public health and human
21 services for water analysis purposes."

23 **Section 76.** Section 75-6-107, MCA, is amended to read:

24 **"75-6-107. Variances and exemptions.** (1) Except as provided in subsection (3), the department
25 may grant a variance or exemption from the requirements of this part or the rules adopted under this part
26 pursuant to the terms and conditions of the variance and exemption rules adopted by the ~~board~~ department.

27 (2) Except as provided in subsection (3), a variance or exemption granted pursuant to this section
28 must be accompanied by a compliance plan specifying a time schedule for compliance.

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1 (3) The department may grant for a period of up to 5 years a variance or exemption for a public water
2 system to use bottled water to achieve compliance with a maximum contaminant level for nitrate. The variance
3 or exemption must include the requirement that the owner of the public water system warn the public that the
4 tap water is not potable and could pose a health risk if consumed by:

5 (a) posting signs at locations required by the variance or exemption for the period granted by the
6 variance or exemption; and

7 (b) delivering annual notices as required by the variance or exemption to users of the public water
8 system.

9 (4) A person aggrieved by a decision of the department to grant, deny, revoke, or modify a variance
10 or exemption may appeal the department's decision to the ~~board~~department board as provided in the Montana
11 Administrative Procedure Act."

13 **Section 77.** Section 75-6-108, MCA, is amended to read:

14 **"75-6-108. Board**~~Department~~ **to prescribe fees -- opportunity for appeal.** (1) The ~~board~~
15 department shall by rule prescribe fees to be assessed annually ~~by the department~~ on owners of public water
16 supply systems to recover department costs in providing services under this part. The annual fee for a public
17 water supply system is no more than \$2.25 for each service connection to the public water supply system for
18 the biennium beginning July 1, 1991, and ending June 30, 1993, and thereafter is no more than \$2 for each
19 service connection to the public water supply system, although the minimum fee for any system is \$100, except
20 that the fee for a transient noncommunity water system is \$50.

21 (2) Public water supply systems in a municipality may raise the rates to recover costs associated with
22 the fees prescribed in this section without the public hearing required in 69-7-111.

23 (3) The ~~board~~department shall by rule prescribe fees ~~to be assessed by the department~~ on persons
24 who submit plans and specifications for construction, alteration, or extension of a public water supply system or
25 public sewage system. The fees must be commensurate with the cost to the department of reviewing the plans
26 and specifications.

27 (4) Fees collected pursuant to this section must be deposited in the public drinking water special
28 revenue fund established in 75-6-115.

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(5) (a) The department shall notify the owner of a public water supply system in writing of the amount of the fee to be assessed and the basis for the assessment. The owner may appeal the fee assessment in writing ~~to the board~~ ~~to the board~~ to the board within 20 days after receipt of the written notice.

(b) An appeal must be based on the allegation that the fee is erroneous or excessive. An appeal may not be based only on the fee schedule adopted by the ~~board~~ department.

(c) If any part of the fee assessment is not appealed, it must be paid to the department upon receipt of the notice provided for in subsection (5)(a)."

Section 78. ~~Section 75-6-109, MCA, is amended to read:~~

~~"75-6-109.—Administrative enforcement. (1) If the department believes that a violation of this part, a rule adopted under this part, or a condition of approval issued under this part has occurred, it may serve written notice of the violation, by certified mail, on the alleged violator or the violator's agent. The notice must specify the provision of this part, the rule, or the condition of approval alleged to have been violated and the facts alleged to constitute a violation. The notice must include an order to take necessary corrective action within a reasonable period of time. The time period must be stated in the order. Service by mail is complete on the date of filing.~~

~~(2) If the alleged violator does not request a hearing before the board within 30 days of the date of service, the order becomes final. Failure to comply with a final order may subject the violator to an action commenced pursuant to 75-6-104, 75-6-113, or 75-6-114.~~

~~(3) If the alleged violator requests a hearing before the board within 30 days of the date of service, the board ~~department~~ shall schedule a hearing. After the hearing is held, the board ~~department~~ may:~~

~~(a) affirm or modify the department's order issued under subsection (1) if the board ~~department~~ finds that a violation has occurred; or~~

~~(b) rescind the department's order if the board ~~department~~ finds that a violation has not occurred.~~

~~(4) An order issued by the department or the board may set a date by which the violation must cease and set a time limit for action to correct a violation.~~

~~(5) As an alternative to issuing an order pursuant to subsection (1), the department may:~~

~~(a) require the alleged violator to appear before the board for a hearing, at a time and place specified~~

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~~in the notice, to answer the charges complained of; or~~

~~(b) initiate an action under 75-6-111(2), 75-6-113, or 75-6-114.~~

~~(6) (a) An action initiated under this part may include an administrative penalty not to exceed:~~

~~(i) \$1,000 for each day of a violation pertaining to a public water system, other than a water hauler or a water bottling plant, that serves a population of more than 10,000; and~~

~~(ii) \$500 for each day of violation for other violations.~~

~~(b) Administrative penalties collected under this section must be deposited in the state general fund.~~

~~(7) In determining the amount of penalty to be assessed to a person, the department or the board, as appropriate, shall consider the penalty factors in 75-1-1001 and the rules promulgated under 75-6-103(2)(i). 75-6-104(2)(i).~~

~~(8) The contested case provisions of the Montana Administrative Procedure Act, provided for in Title 2, chapter 4, part 6, apply to a hearing under 75-6-108 or this section."~~

Section 79. Section 75-6-112, MCA, is amended to read:

"75-6-112. Prohibited acts. A person may not:

(1) commence or continue construction, alteration, extension, or operation of a system of water supply or water distribution that is intended to be used as a public water supply system or a system that is intended to be used as a public sewage system before the person submits to the department necessary maps, plans, and specifications for its review and the department approves those maps, plans, and specifications;

(2) operate or maintain a public water supply system that exceeds a maximum contaminant level established by the ~~board~~ department unless the person has been granted or has an application pending for a variance or exemption pursuant to this part;

(3) violate any provision of this part or a rule adopted under this part; or

(4) violate any condition or requirement of an approval issued pursuant to this part."

Section 80. ~~Section 75-6-113, MCA, is amended to read:~~

~~"75-6-113.—Penalty.—Any person violating this part or any rule or order of the board or department issued under the provisions of this part shall be guilty of a misdemeanor and upon conviction shall be fined not~~

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1 ~~less than \$50 or more than \$500. Each day upon which a violation of this part occurs shall be considered a~~
2 ~~separate offense."~~

3
4 **Section 81.** Section 75-6-116, MCA, is amended to read:

5 **"75-6-116. State regulations no more stringent than federal regulations or guidelines.** (1) After
6 April 14, 1995, except as provided in subsections (2) through (5) or unless required by state law, the board
7 department may not adopt a rule to implement this chapter that is more stringent than the comparable federal
8 regulations or guidelines that address the same circumstances. The board department may incorporate by
9 reference comparable federal regulations or guidelines.

10 (2) The board department may adopt a rule to implement this chapter that is more stringent than
11 comparable federal regulations or guidelines only if the board department makes a written finding after a public
12 hearing and public comment and based on evidence in the record that:

13 (a) the proposed state standard or requirement protects public health or the environment of the state;
14 and

15 (b) the state standard or requirement to be imposed can mitigate harm to the public health or
16 environment and is achievable under current technology.

17 (3) The written finding must reference information and peer-reviewed scientific studies contained in
18 the record that forms the basis for the board's department's conclusion. The written finding must also include
19 information from the hearing record regarding the costs to the regulated community that are directly attributable
20 to the proposed state standard or requirement.

21 (4) (a) A person affected by a rule of the board of environmental review adopted after January 1,
22 1990, and before April 14, 1995, that that person believes to be more stringent than comparable federal
23 regulations or guidelines may petition the board department to review the rule. If the board department
24 determines that the rule is more stringent than comparable federal regulations or guidelines, the board
25 department shall comply with this section by either revising the rule to conform to the federal regulations or
26 guidelines or by making the written finding, as provided under subsection (2), within a reasonable period of
27 time, not to exceed 12 months after receiving the petition. A petition under this section does not relieve the
28 petitioner of the duty to comply with the challenged rule. The board department may charge a petition filing fee

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1 in an amount not to exceed \$250.

2 (b) A person may also petition the board department for a rule review under subsection (4)(a) if the
3 board board of environmental review or the department adopts a rule after January 1, 1990, in an area in which
4 no federal regulations or guidelines existed and the federal government subsequently establishes comparable
5 regulations or guidelines that are less stringent than the previously adopted board-rule.

6 (5) This section does not apply to a rule adopted under the emergency rulemaking provisions of 2-4-
7 303(1)."

8
9 **Section 82.** Section 75-6-121, MCA, is amended to read:

10 **"75-6-121. Delegation of review of small public water and sewer construction.** (1) If a local
11 government requests a delegation and the appropriate division of the local government has established
12 satisfactory review programs, the department may delegate to the division of local government review of:

13 (a) small public water and sewer systems; and

14 (b) extensions or alterations of existing public water and sewer systems that involve 50 or fewer
15 connections.

16 (2) The board department may adopt rules regarding the delegation of review authority to divisions of
17 local government."

18
19 **Section 83.** Section 75-6-131, MCA, is amended to read:

20 **"75-6-131. Rules for regional public water supply systems.** The board department shall adopt
21 rules for approval of regional public water supply systems established by a regional water authority pursuant to
22 Title 75, chapter 6, part 3. The rules must:

23 (1) include procedures for the construction of regional public water supply systems, including
24 regulatory provisions for a series of project segments over the construction period of the project as contained in
25 the final engineering report, as may be amended and approved by the United States bureau of reclamation, that
26 addresses the:

27 (a) approval of design and construction standards that may not be subject to change for 72 months;

28 (b) issuance of deviations from design and construction standards to remain in effect for 72 months;

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- 1 and
- 2 (c) approval of an individual regional water supply system's standard construction contract documents
- 3 and provisions for amendments to those documents to remain in effect for the construction period of the project;
- 4 (2) implement plan and specification review periods or deviation request approval periods for storage,
- 5 pumping, and distribution portions of a regional public water supply system of not more than 40 calendar days
- 6 for the initial review by the department and not more than 20 working days for any subsequent reviews;
- 7 (3) avoid duplicate processes and regulations by coordinating and incorporating the review and
- 8 approval process applicable to a regional public water supply system by the United States bureau of
- 9 reclamation."

11 **Section 84.** ~~Section 75-10-103, MCA, is amended to read:~~

12 ~~"75-10-103. Definitions. Unless the context clearly requires otherwise, in this part, the following~~

13 ~~definitions apply:~~

14 ~~(1) "Board" means the board of environmental review provided for in 2-15-3502;~~

15 ~~(2)(i) "Container site" means a solid waste management facility that:~~

16 ~~(a) is generally open to the public for the collection of solid waste that is generated by more than one~~

17 ~~household or firm and that is collected in a refuse container with a total capacity of not more than 50 cubic~~

18 ~~yards; or~~

19 ~~(b) receives waste from waste collection vehicles and:~~

20 ~~(i) receives no more than 3,000 tons of waste each year;~~

21 ~~(ii) has control measures in place, including onsite staffing, to adequately contain solid wastes and~~

22 ~~blowing litter on the site and to minimize spills and leakage of liquid wastes; and~~

23 ~~(iii) is a site at which a local government unit requires commercial waste haulers to deposit wastes at~~

24 ~~the site only during hours that the site is staffed.~~

25 ~~(3)(2) "Department" means the department of environmental quality provided for in 2-15-3504; ,~~

26 ~~(4)(3) "Local government" means a county, incorporated city or town, or solid waste management~~

27 ~~district organized under the laws of this state.~~

28 ~~(5)(4) "Person" means any individual, firm, partnership, company, association, corporation, city, town,~~

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- 1 ~~or local governmental entity or any other state, federal, or private entity, whether organized for profit or not.~~
- 2 ~~(6)(5) "Resource recovery facility" means any facility at which solid waste is processed for the~~
- 3 ~~purpose of extracting, converting to energy, or otherwise separating and preparing solid waste for reuse.~~
- 4 ~~(7)(6) (a) "Solid waste" means all putrescible and nonputrescible wastes, including but not limited to~~
- 5 ~~garbage, rubbish, refuse, ashes, sludge from sewage treatment plants, water supply treatment plants, or air~~
- 6 ~~pollution control facilities; construction and demolition wastes; dead animals, including offal; discarded home~~
- 7 ~~and industrial appliances; and wood products or wood byproducts and inert materials.~~
- 8 ~~(b) Solid waste does not mean municipal sewage, industrial wastewater effluents, mining wastes~~
- 9 ~~regulated under the mining and reclamation laws administered by the department, slash and forest debris~~
- 10 ~~regulated under laws administered by the department of natural resources and conservation, or marketable~~
- 11 ~~byproducts.~~
- 12 ~~(8)(7) "Solid waste management system" means any system that controls the storage, treatment,~~
- 13 ~~recycling, recovery, or disposal of solid waste. For the purposes of this definition, a container site is not a~~
- 14 ~~component of a solid waste management system.~~
- 15 ~~(9)(8) "State solid waste management and resource recovery plan" means the statewide plan~~
- 16 ~~formulated by the department as authorized by this part."~~

18 **Section 85.** Section 75-10-104, MCA, is amended to read:

19 **"75-10-104. Duties of department.** The department shall:

- 20 (1) prepare, adopt, and implement a state solid waste management and resource recovery plan as
- 21 required by 75-10-111 and 75-10-807;
- 22 (2) prepare ~~adopt~~ rules necessary for the implementation of this part ~~for submission to the board,~~
- 23 including but not limited to rules:
- 24 (a) governing the submission of plans for a solid waste management system;
- 25 (b) (i) establishing, for the purpose of determining the tonnage or volume-based solid waste
- 26 management fee that a facility is subject to under 75-10-115(1)(c), methods for determining or estimating the
- 27 amount of solid waste incinerated or disposed of at a facility; and
- 28 (ii) governing the application fee, flat annual license renewal fee, and tonnage or volume-based

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1 renewal fee for solid waste management systems;
2 (c) establishing the license application fee that a facility is subject to under 75-10-115(1)(a);
3 (d) establishing the flat annual license renewal fee that a facility is subject to under 75-10-115(1)(b);
4 (e) establishing the tonnage or volume-based annual renewal fee that a facility is subject to under 75-
5 10-115(1)(c); and
6 (f) providing procedures for the quarterly collection of the solid waste management fee provided for in
7 75-10-204(6);
8 (3) provide technical assistance to persons within the state for planning, designing, constructing,
9 financing, and operating:
10 (a) a solid waste management system in order to ensure that the system conforms to the state plan;
11 (b) integrated waste management programs; and
12 (c) collection, disposal, reduction, and educational programs for household hazardous waste and
13 small quantities of hazardous waste that are exempt from regulation under Title 75, chapter 10, part 4;
14 (4) enforce and administer the provisions of this part;
15 (5) approve plans for a proposed solid waste management system submitted by a local government;
16 and
17 (6) serve as a clearinghouse for information on waste reduction and reuse, recycling technology and
18 markets, composting, and household hazardous waste disposal, including chemical compatibility."
19
20 **Section 86.** Section 75-10-112, MCA, is amended to read:
21 **"75-10-112. Powers and duties of local government.** A local government may:
22 (1) plan, develop, and implement a solid waste management system consistent with the state's solid
23 waste management and resource recovery plan and propose modifications to the state's solid waste
24 management and resource recovery plan;
25 (2) upon adoption of the state plan ~~by the board~~, pass an ordinance or resolution to exempt the local
26 jurisdiction from complying with the state plan and subsequent rules implementing the state plan. The
27 ordinance or resolution must include a means to provide solid waste disposal to the citizens of the jurisdiction
28 as required in part 2 of this chapter.

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1 (3) employ appropriate personnel to carry out the provisions of this part;
2 (4) purchase, rent, or execute leasing agreements for equipment and material necessary for the
3 implementation of a solid waste management system;
4 (5) cooperate with and enter into agreements with any persons in order to implement an effective
5 solid waste management system;
6 (6) receive gifts, grants, or donations or acquire by gift, deed, or purchase land necessary for the
7 implementation of any provision of this part;
8 (7) enforce the rules of the department or a local board of health pertaining to solid waste
9 management through the appropriate county attorney;
10 (8) apply for and utilize state, federal, or other available money for developing or operating a solid
11 waste management system;
12 (9) borrow from any lending agency funds available for assistance in planning a solid waste
13 management system;
14 (10) finance a solid waste management system by:
15 (a) subject to 15-10-420, fixing the assessment of a tax as authorized by state law; and
16 (b) as provided in 7-13-4108, fixing and collecting by ordinance or resolution the rates, rentals, and
17 charges for a solid waste management system on system customers;
18 (11) sell on an installment sales contract or lease to a person all or a portion of a solid waste
19 management system that the local government plans, designs, or constructs for the consideration and upon the
20 terms established by the local governments and consistent with the loan requirements set forth in this part and
21 rules adopted to implement this part;
22 (12) procure insurance against any loss in connection with property, assets, or activities;
23 (13) mortgage or otherwise encumber all or a portion of a solid waste management system when the
24 local government finds that the action is necessary to implement the purposes of this part, as long as the action
25 is consistent with the loan requirements set forth in this part and rules adopted to implement this part;
26 (14) hold or dispose of real property and, subject to agreements with lessors and lessees, develop or
27 alter the property by making improvements or betterments for the purpose of enhancing the value and
28 usefulness of the property;

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- 1 (15) finance, design, construct, own, and operate a solid waste management system or contract for
2 any or all of the powers authorized under this part;
3 (16) control the disposition of solid waste generated within the jurisdiction of the local government,
4 except that, in the absence of an imminent threat to public health, safety, or the environment, a local
5 government may not adopt a flow control or similar ordinance to require use of a specific transfer station or
6 landfill for disposal of solid waste;
7 (17) enter into long-term contracts with local governments and private entities for:
8 (a) financing, designing, constructing, and operating a solid waste management system;
9 (b) marketing all raw or processed material recovered from solid waste;
10 (c) marketing energy products or byproducts resulting from processing or utilization of solid waste;
11 (18) finance an areawide solid waste management system through the use of any of the sources of
12 revenue available to the implementation entity for public works projects, by the use of revenue bonds issued by
13 the city or county, or by fees levied by a solid waste management district, whichever is appropriate;
14 (19) enter into interlocal agreements in order to achieve and implement the powers enumerated in this
15 part;
16 (20) regulate the siting and operation of container sites."

17
18 **Section 87.** Section 75-10-115, MCA, is amended to read:

19 **"75-10-115. Solid waste management fee.** (1) The department may prepare adopt rules for adoption
20 by the board, pursuant to 75-10-104 and ~~75-10-406~~, that set fees for the management and regulation of solid
21 waste at facilities subject to regulation pursuant to part 2 of this chapter. Upon adoption by the board, the
22 department may collect the fees. These fees may include:

- 23 (a) a license application fee that reflects the cost of reviewing a new solid waste management system
24 or a substantial change to an existing facility from the time an application is made until the license is issued or
25 denied;
26 (b) a flat annual license renewal fee that reflects a minimal base fee related to the fixed costs of an
27 annual inspection and license renewal. The initial annual fee year for a new facility commences on the date that
28 the facility initially receives waste. The fee must be based upon the categorization of solid waste management

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- 1 systems into separate classes identified by the following criteria:
2 (i) the quantity of solid waste received by the solid waste management system;
3 (ii) the nature of the solid waste received; and
4 (iii) the nature of the waste management occurring within the solid waste management system.
5 (c) a tonnage or volume-based fee on solid waste disposal.
6 (2) All fees collected must be deposited in the solid waste management account provided for in 75-
7 10-117."

8
9 **Section 88.** ~~Section 75-10-203, MCA, is amended to read:~~

10 ~~"75-10-203.—Definitions.—Unless the context requires otherwise, in this part, the following definitions~~
11 ~~apply:~~

12 ~~(1)—"Board" means the board of environmental review provided for in 2-15-3502.~~

13 ~~(2)(1)—"Department" means the department of environmental quality provided for in 2-15-3501.~~

14 ~~(3)(2)—"Dispose" or "disposal" means the discharge, injection, deposit, dumping, spilling, leaking, or~~
15 ~~placing of any solid waste into or onto the land so that the solid waste or any constituent of it may enter the~~
16 ~~environment or be emitted into the air or discharged into any waters, including ground water.~~

17 ~~(4)(3)—"Household hazardous waste" means products commonly used in the home that due to~~
18 ~~corrosivity, ignitability, reactivity, toxicity, or other chemical or physical properties are dangerous to human~~
19 ~~health or the environment. Household hazardous waste includes but is not limited to cleaning, home~~
20 ~~maintenance, automobile, personal care, and yard maintenance products.~~

21 ~~(5)(4)—"Household waste" means any solid waste derived from households, including single and~~
22 ~~multiple residences, hotels, and motels, crew quarters, and campgrounds and other public recreation and public~~
23 ~~land management facilities.~~

24 ~~(6)(5)—(a) "Municipal solid waste landfill" means any publicly or privately owned landfill or landfill unit~~
25 ~~that receives household waste or other types of waste, including commercial waste, nonhazardous sludge, and~~
26 ~~industrial solid waste.~~

27 ~~(b)—The term does not include land application units, surface impoundments, injection wells, or waste~~
28 ~~piles.~~

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1 ~~(7)(6)~~—"Person" means an individual, firm, partnership, company, association, corporation, city, town,
2 local governmental entity, or any other governmental or private entity, whether organized for profit or not;
3 ~~(8)(7)~~—"Resource recovery" means the recovery of material or energy from solid waste;
4 ~~(9)(8)~~—"Resource recovery facility" means a facility at which solid waste is processed for the purpose
5 of extracting, converting to energy, or otherwise separating and preparing solid waste for reuse;
6 ~~(10)(9)~~—"Resource recovery system" means a solid waste management system that provides for the
7 collection, separation, recycling, or recovery of solid wastes, including disposal of nonrecoverable waste
8 residues;
9 ~~(11)(10)~~—(a) "Solid waste" means all putrescible and nonputrescible wastes, including but not limited to
10 garbage, rubbish, refuse, ashes, sludge from sewage treatment plants, water supply treatment plants, or air
11 pollution control facilities; construction and demolition wastes; dead animals, including offal; discarded home
12 and industrial appliances; and wood products or wood byproducts and inert materials;
13 (b) Solid waste does not mean municipal sewage, industrial wastewater effluents, mining wastes
14 regulated under the mining and reclamation laws administered by the department of environmental quality,
15 slash and forest debris regulated under laws administered by the department of natural resources and
16 conservation, or marketable byproducts;
17 ~~(12)(11)~~—"Solid waste management system" means a system that controls the storage, treatment,
18 recycling, recovery, or disposal of solid waste. For the purposes of this definition, a container site, as defined in
19 75-10-103, is not a component of a solid waste management system;
20 ~~(13)(12)~~—"Storage" means the actual or intended containment of wastes, either on a temporary basis or
21 for a period of years;
22 ~~(14)(13)~~—"Transport" means the movement of wastes from the point of generation to any intermediate
23 points and finally to the point of ultimate storage or disposal;
24 ~~(15)(14)~~—"Treatment" means a method, technique, or process, including neutralization, designed to
25 change the physical, chemical, or biological character or composition of any solid waste so as to neutralize the
26 waste or so as to render it safer for transport, amenable for recovery, amenable for storage, or reduced in
27 volume;
28 ~~(16)(15)~~—"Waste tire" means a tire that is no longer suitable for its original intended purpose because of

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1 wear, damage, or defect."
2
3 **Section 89.** Section 75-10-206, MCA, is amended to read:
4 ~~"75-10-206.—Variance.~~ (1) A person may apply to the board ~~department~~ for a variance from rules
5 adopted by the department pursuant to 75-10-204, except for rules adopted pursuant to 75-10-204(6). The
6 board ~~department~~ may grant a variance if it finds that:
7 (a) failure to comply with the rules does not result in a danger to public health or safety; or
8 (b) compliance with the rules from which a variance is sought would produce hardship without
9 producing benefits to the health and safety of the public that outweigh the hardship.
10 (2) A variance may not be granted pursuant to this section except after a hearing pursuant to the
11 Montana Administrative Procedure Act and consideration by the board ~~department~~ of the relative interests of
12 the applicant and owners of the property likely to be affected by the waste disposal system under consideration;
13 (3) This section may not be construed as relieving the board ~~department~~ from the obligation to comply
14 with the Resource Conservation and Recovery Act of 1976, as amended, or as allowing the board ~~department~~
15 to grant a variance less restrictive than that act."
16
17 **Section 90.** Section 75-10-221, MCA, is amended to read:
18 **"75-10-221. License required -- application.** (1) Except as provided in 75-10-214, a person may not
19 dispose of solid waste or operate a solid waste management system without a license from the department.
20 (2) The department shall provide application forms for a license as provided in this part.
21 (3) The application must contain the name and business address of the applicant, the location of the
22 proposed solid waste management system, a plan of operation and maintenance, and other information that the
23 department may by rule require.
24 (4) The license provided for in this section is for a period not to exceed 12 months unless renewed by
25 the department.
26 (5) The department may require submission of a new application if the department determines that
27 the plan of operation, the management of the solid waste system, or the geological or ground water conditions
28 have changed since the license was initially approved.

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(6) In preparing rules ~~for board adoption that~~ establish fees for licenses and the review of applications pursuant to 75-10-104(2), the department shall consider the tonnage or volume of waste to be managed and the size of the proposed solid waste management system. The fees adopted ~~by the board must~~ encourage reduction in the tonnage or volume of waste to be managed and cover the costs to the department of initially reviewing and annually licensing the solid waste management system."

Section 91. Section 75-10-223, MCA, is amended to read:

~~"75-10-223.—Refusal by local health officer—appeal to board department.~~ (1) The local health officer may refuse to validate a license issued under this part only upon a finding that the requirements of this part and the rules implementing this part cannot be satisfied. If the local health officer refuses to validate the license, the local health officer shall notify the applicant, the department, and any other interested person in writing.

(2) ~~The applicant or any person aggrieved by the decision of the local health officer not to validate a license may appeal the decision to the board department within 30 days after receiving written notice of the local health officer's decision.~~

(3) ~~The hearing before the board must be held pursuant to the contested case provisions of the Montana Administrative Procedure Act."~~

Section 92. Section 75-10-224, MCA, is amended to read:

~~"75-10-224.—Revocation or denial of license by department.~~ The department may deny or revoke a license to operate a solid waste management system after giving the applicant and the local health officer written notice and an opportunity for a hearing before the board department. The decision to deny or revoke a license may be made only after a finding that a solid waste management system cannot be operated or is not being operated in compliance with this part or a rule or order issued pursuant to this part. The hearing held before the board on a denial or revocation shall must be held pursuant to the provisions of the Montana Administrative Procedure Act."

Section 93. Section 75-10-227, MCA, is amended to read:



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~~"75-10-227.—Administrative enforcement.~~ (1) When the department believes that a violation of part 1 or this part, a violation of a rule adopted under part 1 or this part, a violation of an order issued under this part, or a violation of a permit provision has occurred, it may serve written notice of the violation on the alleged violator or the violator's agent. The notice must specify the provision of law, rule, or permit alleged to be violated and the facts alleged to constitute a violation and may include an order to take necessary corrective action within a reasonable period of time stated in the order, an order assessing an administrative penalty pursuant to 75-10-228, or both. The order becomes final unless, within 30 days after the notice is served, the person named requests in writing a hearing before the board department. On receipt of the request, the board department shall schedule a hearing. Service by mail is complete on the date of mailing.

(2) If, after a hearing held under subsection (1), the board department finds that a violation has occurred, it shall either affirm or modify the department's order. An order issued by the department or by the board may prescribe the date by which the violation must cease and may prescribe time limits for particular action. If, after a hearing, the board department finds that a violation has not occurred, it shall rescind the department's order.

(3) Instead of issuing an order pursuant to subsection (1), the department may either:

(a) require the alleged violator to appear before the board department for a hearing at a time and place specified in the notice and answer the charges; or

(b) initiate action under part 1 or this part.

(4) This section does not prevent the board or department from making efforts to obtain voluntary compliance through warning, conference, or any other appropriate means.

(5) The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing held under this section."

Section 94. Section 75-10-403, MCA, is amended to read:

~~"75-10-403.—Definitions.~~ Unless the context requires otherwise, in this part, the following definitions apply:

(1) "Board" means the board of environmental review provided for in 2-15-3502.

(2) ~~(1)~~ "Department" means the department of environmental quality provided for in 2-15-3501.



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1 (3)(2) — "Dispose" or "disposal" means the discharge, injection, deposit, dumping, spilling, leaking, or
2 placing of any hazardous waste into or onto the land or water so that the hazardous waste or any constituent of
3 the hazardous waste may enter the environment or be emitted into the air or discharged into any waters,
4 including ground water.
5 (4)(3) — "Environmental protection law" means a law contained in or an administrative rule adopted
6 pursuant to Title 75, chapter 2, 5, 10, or 11.
7 (5)(4) — "Facility" or "hazardous waste management facility" means all contiguous land and structures,
8 other appurtenances, and improvements on the land used for treating, storing, or disposing of hazardous
9 waste. A facility may consist of several treatment, storage, or disposal operational units.
10 (6)(5) — "Generation" means the act or process of producing waste material.
11 (7)(6) — "Generator" means any person, by site, whose act or process produces hazardous waste or
12 whose act first causes a hazardous waste to become subject to regulation under this part.
13 (8)(7) — (a) — "Hazardous waste" means a waste or combination of wastes that, because of its quantity,
14 concentration, or physical, chemical, or infectious characteristics, may:
15 (i) — cause or significantly contribute to an increase in mortality or an increase in serious irreversible or
16 incapacitating reversible illness; or
17 (ii) — pose a substantial present or potential hazard to human health or the environment when improperly
18 treated, stored, transported, or disposed of or otherwise managed.
19 (b) — Hazardous wastes do not include those substances governed by Title 82, chapter 4, part 2.
20 (9)(8) — "Hazardous waste management" means the management of the collection, source separation,
21 storage, transportation, processing, treatment, recovery, and disposal of hazardous wastes.
22 (10)(9) — "Hazardous waste transfer facility" means any land, structure, or improvement, including
23 loading docks, parking areas, holding sites, and other similar areas, used for the transfer and temporary
24 storage of hazardous wastes and where shipments of hazardous waste are temporarily held for a period of 10
25 days or less during the normal course of transportation up to but not including the point of ultimate treatment,
26 storage, or disposal.
27 (11)(10) — "Manifest" means the shipping document that is originated and signed by the generator and
28 that is used to identify the hazardous waste and its quantity, origin, and destination during its transportation.

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1 (12)(11) — "Person" means the United States, an individual, firm, trust, estate, partnership, company,
2 association, corporation, city, town, local governmental entity, or any other governmental or private entity,
3 whether organized for profit or not.
4 (13)(12) — "Remediation waste" means, for the purposes of fee assessment only, all hazardous waste,
5 debris, and media, including ground water, surface water, soils, and sediments, that are managed for
6 implementing cleanup.
7 (14)(13) — "Storage" means the actual or intended containment of hazardous wastes, either on a
8 temporary basis or for a period of years.
9 (15)(14) — "Transportation" means the movement of hazardous wastes from the point of generation to
10 any intermediate points and finally to the point of ultimate storage or disposal.
11 (16)(15) — "Transporter" means a person engaged in the offsite transportation of hazardous waste by air,
12 rail, highway, or water.
13 (17)(16) — "Treatment" means a method, technique, or process, including neutralization, designed to
14 change the physical, chemical, or biological character or composition of any hazardous waste so as to
15 neutralize the waste or so as to render it nonhazardous, safer for transportation, amenable for recovery,
16 amenable for storage, or reduced in volume.
17 (18)(17) — "Used oil" means any oil that has been refined from crude oil or any synthetic oil, either of
18 which has been used and as a result of that use is contaminated by physical or chemical impurities."
19
20 **Section 95.** Section 75-10-406, MCA, is amended to read:
21 "75-10-406.—**Permits.** (1) A person may not construct or operate a hazardous waste management
22 facility without first obtaining a permit from the department for the facility, except that the department may, by
23 rule, prescribe conditions under which specified hazardous wastes or specified quantities of hazardous waste
24 may be disposed of at solid waste disposal sites licensed by the department pursuant to Title 75, chapter 10,
25 part 2.
26 (2) — Any person who wishes to construct or operate a hazardous waste management facility shall
27 apply to the department for a permit on forms provided by the department. An application must contain, at a
28 minimum, the name and business address of the applicant, the location of the proposed facility, a plan of

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1 operation and maintenance, and a description of pertinent site characteristics.

2 (3)—A permit may be issued for a period specified by the department and is subject to renewal by the

3 department upon a showing that the facility has been operated in accordance with the terms of the permit and

4 the rules applicable to the facility and in compliance with the provisions of this part and any applicable order of

5 the board or department.

6 (4)—Any permit issued is subject to revocation by the department for failure of the permittee to comply

7 with the terms and conditions of the permit, the department rules, an order of the board or the department, or

8 the provisions of this part. Any person who is denied a permit by the department or who has a permit revoked

9 or modified shall must be afforded an opportunity for a hearing before the board department upon written

10 application made within 30 days after service of notice of denial, revocation, or modification by mail. Service by

11 mail is complete upon mailing.

12 (5)—Notwithstanding any other provisions of this part, the department may, in the event of an imminent

13 and substantial danger to public health or the environment, issue a temporary emergency permit to any person

14 for treatment, storage, or disposal of hazardous waste or to any facility to handle hazardous waste not covered

15 by the existing facility permit. Emergency permits may be oral or written, may not exceed 90 days in duration,

16 and may be terminated by the department at any time prior to 90 days.

17 (6)—The department may, as it considers appropriate, grant permits by rule to classes or categories of

18 hazardous waste management facilities where the facility owner or operator is already licensed or permitted by

19 the department pursuant to other state environmental statutes or where an interim period exists until final

20 administrative disposition of a permit application is made.

21 (7)—In permits issued under this section, the department shall require corrective action for all releases

22 of hazardous waste or constituents at a treatment, storage, or disposal facility, including corrective action for

23 releases that extend beyond the facility boundaries if necessary to protect public health or the environment. A

24 permit must contain a schedule of compliance for corrective action and requirements for assurance of financial

25 responsibility for completion of the corrective action.

26 (8)—Each permit issued by the department to a person owning or operating a facility must contain the

27 terms and conditions the department considers necessary to protect human health and the environment."

28

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1 **Section 96.** Section 75-10-408, MCA, is amended to read:

2 **"75-10-408.—Variances — renewals.** (1) A person who is a generator or transporter of hazardous

3 wastes or who owns or operates a hazardous waste management facility may apply to the board department

4 for a variance or partial variance from the application of or compliance with any requirement of this part or any

5 rule adopted under this part. The board department may grant a variance or partial variance if it finds that:

6 (a)—the applicant's actions or proposed actions regarding generation, transportation, treatment,

7 storage, or disposal of hazardous wastes do not constitute a danger to public health or safety or cause

8 substantially adverse environmental effects; and

9 (b)—the application of or compliance with the requirement or rule would produce unreasonable

10 hardship without equal or greater benefits to the public.

11 (2)—No variance or partial variance may be granted except after public hearing on due notice and until

12 the board has considered department considers the relative interests of the applicant, other persons specifically

13 affected, and the general public.

14 (3)—No variance or partial variance may be granted for a period to exceed 1 year, but the variance or

15 partial variance may be renewed for like periods if no complaint is made to the board department because of it

16 or if, after the complaint has been made and duly considered at a public hearing held by the board department

17 on due notice, the board department finds that renewal is justified. No renewal may be granted except on

18 application therefor for renewal. An application for renewal shall must be made in the manner and upon such

19 notice as specified in rules promulgated under this part. A renewal pursuant to this subsection shall must be on

20 the same grounds and subject to the same limitations and requirements as provided in subsection (1).

21 (4)—A variance, partial variance, or renewal thereof is not a right of the applicant or holder thereof of

22 the variance, partial variance, or renewal but shall must be granted at the discretion of the board department.

23 However, a person adversely affected by a variance, partial variance, or renewal granted by the board

24 department may obtain judicial review thereof as provided by the judicial review of contested case provisions of

25 the Montana Administrative Procedure Act.

26 (5)—Nothing in this section and no variance, partial variance, or renewal granted pursuant to this

27 section may be construed to prevent or limit the application of the emergency provisions and procedures of 75-

28 10-415.

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(6)—Under no conditions may a variance be granted by the board department that would result in a less stringent requirement or degree of control than would be imposed by the applicable federal regulations adopted under the federal Resource Conservation and Recovery Act."

Section 97. Section 75-10-409, MCA, is amended to read:

"75-10-409.—**Compliance monitoring and reporting.**—(1) The department may, as a condition of a permit, require the owner or operator of a facility to install equipment, collect and analyze samples, and maintain records in order to monitor and demonstrate compliance with this part, rules adopted under this part, any order of the board or department, and permit conditions;

(2)—The department may require the owner or operator of a facility to submit reports on the compliance monitoring activities, including notice to the department of any noncompliance with permit conditions, rules adopted under this part, the provisions of this part, or any orders of the department or board."

Section 98. Section 75-10-413, MCA, is amended to read:

"75-10-413.—**Administrative enforcement.**—(1) When the department believes that a violation of this part, a rule adopted under this part, or a permit provision has occurred, it may serve written notice of the violation personally or by certified mail on the alleged violator or the violator's agent. The notice must specify the provision of this part, the rule, or the permit provision alleged to be violated and the facts alleged to constitute a violation and may include an order to take necessary corrective action within a reasonable period of time stated in the order. The order becomes final unless, within 30 days after the notice is served, the person named requests, in writing, a hearing before the board department. On receipt of the request, the board department shall schedule a hearing. Service by mail is complete on the date of mailing.

(2)—If, after a hearing held under subsection (1), the board department finds that a violation has occurred, it shall either affirm or modify the department's order. An order issued by the department or by the board may prescribe the date by which the violation must cease and may prescribe time limits for particular action. If, after hearing, the board department finds that a violation has not occurred, it shall rescind the department's order.

(3)—In addition to or instead of issuing an order pursuant to subsection (1), the department may:

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(a)—require the alleged violator to appear before the board or department, by subpoena or subpoena duces tecum, for a hearing at a time and place specified in the notice to answer the charges complained of or to provide information regarding the alleged violation or its actual or potential impact on public health and welfare or the environment; or

(b)—initiate action under 75-10-414, 75-10-417, or 75-10-418; .

(4)—In the case of disobedience of any subpoena issued and served under this section or of the refusal of any witness to testify as to any material matter with regard to which the witness may be interrogated in a hearing or investigation before the board or the department, the board or department may apply to any district court in the state for an order to compel compliance with the subpoena or the giving of testimony. The court shall hear the matter as expeditiously as possible. If the disobedience or refusal is found to be unjustified, the court shall enter an order requiring compliance. Disobedience of the order is punishable by contempt of court in the same manner and by the same procedures as is provided for like conduct committed in the course of civil actions in district court.

(5)—This section does not prevent the board or department from making efforts to obtain voluntary compliance through warning, conference, or any other appropriate means."

Section 99. Section 75-10-414, MCA, is amended to read:

"75-10-414.—**Injunctions.**—The department may institute and maintain in the name of the state actions for injunctive relief as provided in Title 27, chapter 19, to:

(1)—immediately restrain any person from engaging in any unauthorized activity which is endangering or causing damage to public health or the environment;

(2)—enjoin a violation of this part, a rule adopted under this part, an order of the department or the board, or a permit provision without the necessity of prior revocation of the permit; or

(3)—require compliance with this part, a rule adopted under this part, an order of the department or the board, or a permit provision."

Section 100. Section 75-10-417, MCA, is amended to read:

"75-10-417.—**Civil penalties.**—(1) A person who violates any provision of this part, a rule adopted under

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1 this part, an order of the department or the board, or a permit is subject to a civil penalty not to exceed \$10,000
2 for each violation. Each day of violation constitutes a separate violation. Penalties assessed under this section
3 must be determined in accordance with the penalty factors in 75-1-1004.

4 (2) The department may institute and maintain in the name of the state any enforcement proceedings
5 under this section. Upon request of the department, the attorney general or the county attorney of the county of
6 violation shall petition the district court to impose, assess, and recover the civil penalty. An action to recover
7 penalties must be brought in the district court of the county in which the violation occurred or, if mutually agreed
8 on by the parties in the action, in the district court of the first judicial district, Lewis and Clark County.

9 (3) Action under this section does not bar:

10 (a) enforcement of this part, rules adopted under this part, orders of the department or the board, or
11 permits by injunction or other appropriate remedy; or

12 (b) action under 75-10-448.

13 (4) Money collected under this section must be deposited in the state general fund."

14
15 **Section 101.** Section 75-10-418, MCA, is amended to read:

16 "75-10-418. **Criminal penalties.** (1) A person is guilty of an offense under this section if the person
17 knowingly:

18 (a) transports any hazardous waste to an unpermitted facility;

19 (b) treats, stores, or disposes of hazardous waste subject to regulation under this part or the rules
20 adopted under this part without a permit or contrary to a material permit condition;

21 (c) omits material information or makes any false statement or representation in any application, label,
22 manifest, record, report, permit, or other document filed, maintained, or used for compliance with provisions of
23 this part or rules adopted under this part pertaining to the handling of hazardous waste;

24 (d) generates, stores, treats, transports, disposes of, or otherwise handles any used oil or hazardous
25 waste regulated under this part or rules adopted under this part and knowingly destroys, alters, conceals, or
26 fails to file any record, application, manifest, report, or other document required to be maintained or filed in
27 compliance with the provisions of this part, an order issued under this part, or rules adopted under this part; or

28 (e) transports or causes to be transported without a manifest any hazardous waste required to be

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1 accompanied by a manifest.

2 (2) A person who is guilty of an offense under subsection (1) is subject to a fine of not more than
3 \$25,000 per violation or imprisonment for a period not to exceed 3 years, or both. Each day of violation
4 constitutes a separate violation.

5 (3) A person who knowingly violates any requirement of this part or any rule or material permit
6 condition issued pursuant to this part (except those violations specified in subsection (1)) regarding any
7 hazardous waste that is subject to regulation is guilty of an offense and subject to a fine of up to \$5,000 per
8 violation or subject to imprisonment not to exceed 6 months, or both. Each day of violation constitutes a
9 separate violation.

10 (4) Upon a second conviction for a violation of this section, the maximum penalties specified in this
11 section must be doubled.

12 (5) Action under this section does not bar enforcement of this part, rules made under this part, orders
13 of the department or the board, or permits by injunction or other appropriate remedy.

14 (6) Money collected under this section, except money collected in a justice's court, must be deposited
15 in the state general fund."

16
17 **Section 102.** Section 75-10-424, MCA, is amended to read:

18 "75-10-424. **Administrative penalty.** (1) The department may assess a person who violates a
19 provision of this part or a rule adopted under this part an administrative penalty, not to exceed \$10,000 for each
20 violation. Each day of violation constitutes a separate violation, but the maximum penalty may not exceed
21 \$100,000 for any related series of violations. Assessment of an administrative penalty under this section must
22 be made in conjunction with an order or administrative action authorized by this chapter.

23 (2) An administrative penalty may not be assessed under this section unless the alleged violator is
24 given notice and opportunity for a hearing before the board department pursuant to Title 2, chapter 4, part 6.

25 (3) In determining the appropriate amount of an administrative penalty, the department shall consider
26 the penalty factors in 75-1-1004.

27 (4) If the department is unable to collect the administrative penalty or if a person fails to pay all or any
28 portion of the administrative penalty as determined by the department, the department may file an action to

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1 recover the amount not paid. The action must be brought in the district court of the county in which the violation
2 occurred or, if mutually agreed on by the parties in the action, in the district court of the first judicial district,
3 Lewis and Clark County.

4 (5) Action under this section does not bar action under 75-10-413 through 75-10-418 or any other
5 appropriate remedy.

6 (6) Administrative penalties collected under this section must be deposited in the state general fund."

8 **Section 103.** Section 75-10-501, MCA, is amended to read:

9 "75-10-501. ~~(Temporary)~~ Definitions. Unless the context requires otherwise, in this part, the
10 following definitions apply:

11 (1) "Board" means the board of environmental review provided for in 2-15-3502.

12 (2)(1) "Component part" means any identifiable part of a discarded, ruined, wrecked, or dismantled
13 motor vehicle, including but not limited to fenders, doors, hoods, engine blocks, motor parts, transmissions,
14 frames, axles, wheels, tires, and passenger compartment fixtures.

15 (3)(2) "Department" means the department of environmental quality provided for in 2-15-3501.

16 (4)(3) "Junk mobile home" means a mobile home as defined in 15-24-201 that is wrecked, ruined,
17 dismantled, or abandoned and is no longer fit for human habitation.

18 (5)(4) "Junk nonmotorized vehicle" means an inoperative vehicle that is not constructed with a motor
19 and that is discarded, ruined, wrecked, or dismantled.

20 (6)(5)(a) "Junk vehicle" means a motor vehicle, including component parts:

21 (i) that is discarded, ruined, wrecked, or dismantled;

22 (ii) that, except as provided in subsection (6)(b)(5)(b), is not lawfully and validly licensed; and

23 (iii) that remains inoperative or incapable of being driven.

24 (b) If a vehicle is permanently registered under 61-3-562 and meets the criteria for a junk vehicle
25 under subsection (6)(a), ~~(5)(a)~~, the vehicle is a junk vehicle.

26 (7)(6) "Motor vehicle graveyard" means a collection point established by a county for junk motor
27 vehicles prior to their disposal.

28 (8)(7)(a) "Motor vehicle wrecking facility" means:

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1 (i) a facility buying, selling, or dealing in four or more vehicles a year, of a type required to be
2 licensed, for the purpose of wrecking, dismantling, disassembling, or substantially changing the form of the
3 motor vehicle; or

4 (ii) a facility that buys or sells component parts, in whole or in part, and deals in secondhand motor
5 vehicle parts. A facility that buys or sells component parts of a motor vehicle, in whole or in part, is a motor
6 vehicle wrecking facility whether or not the buying or selling price is based upon weight or any other type of
7 classification.

8 (b) The term does not include a garage where wrecked or disabled motor vehicles are temporarily
9 stored for a reasonable period of time for inspection, repairs, or subsequent removal to a junkyard.

10 (9)(9) "Person" means any individual, firm, partnership, company, association, corporation, city, town,
11 local governmental entity, or other governmental or private entity, whether organized for profit or not.

12 (10)(9) "Public view" means any point 6 feet above the surface of the center of a public road from
13 which junk vehicles can be seen.

14 (11)(10) "Shielding" means the construction or use of fencing or constructed or natural barriers to
15 conceal junk vehicles from public view. (Terminates June 30, 2021—sec. 5, Ch. 427, L. 2019.)

16 **75-10-501.** ~~(Effective July 1, 2021)~~ Definitions. Unless the context requires otherwise, in this part,
17 the following definitions apply:

18 (1) "Board" means the board of environmental review provided for in 2-15-3502.

19 (2)(1) "Component part" means any identifiable part of a discarded, ruined, wrecked, or dismantled
20 motor vehicle, including but not limited to fenders, doors, hoods, engine blocks, motor parts, transmissions,
21 frames, axles, wheels, tires, and passenger compartment fixtures.

22 (3)(2) "Department" means the department of environmental quality provided for in 2-15-3501.

23 (4)(3)(a) "Junk vehicle" means a motor vehicle, including component parts:

24 (i) that is discarded, ruined, wrecked, or dismantled;

25 (ii) that, except as provided in subsection (4)(b), ~~(3)(b)~~, is not lawfully and validly licensed; and

26 (iii) that remains inoperative or incapable of being driven.

27 (b) If a vehicle is permanently registered under 61-3-562 and meets the criteria for a junk vehicle
28 under subsection (4)(a), ~~(3)(a)~~, the vehicle is a junk vehicle.

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1 ~~(5)(4)~~—"Motor-vehicle-graveyard" means a collection point established by a county for junk motor
2 vehicles prior to their disposal.
3 ~~(6)(5)~~—(a)—"Motor-vehicle-wrecking-facility" means:
4 (i)—a facility buying, selling, or dealing in four or more vehicles a year, of a type required to be
5 licensed, for the purpose of wrecking, dismantling, disassembling, or substantially changing the form of the
6 motor vehicle; or
7 (ii)—a facility that buys or sells component parts, in whole or in part, and deals in secondhand motor
8 vehicle parts. A facility that buys or sells component parts of a motor vehicle, in whole or in part, is a motor
9 vehicle wrecking facility whether or not the buying or selling price is based upon weight or any other type of
10 classification.
11 (b)—The term does not include a garage where wrecked or disabled motor vehicles are temporarily
12 stored for a reasonable period of time for inspection, repairs, or subsequent removal to a junkyard.
13 ~~(7)(6)~~—"Person" means any individual, firm, partnership, company, association, corporation, city, town,
14 local governmental entity, or other governmental or private entity, whether organized for profit or not.
15 ~~(8)(7)~~—"Public view" means any point 6 feet above the surface of the center of a public road from
16 which junk vehicles can be seen.
17 ~~(9)(8)~~—"Shielding" means the construction or use of fencing or constructed or natural barriers to
18 conceal junk vehicles from public view."
19
20 **Section 104.** Section 75-10-515, MCA, is amended to read:
21 "**75-10-515.—Appeals.** A decision by the department to issue, deny, or revoke a motor vehicle
22 wrecking facility or graveyard license may be appealed to the board department within 30 days after receipt of
23 official notice of the department's decision."
24
25 **Section 105.** Section 75-10-540, MCA, is amended to read:
26 "**75-10-540.—Administrative enforcement.** (1) When the department determines that a violation of
27 this part, a violation of a rule adopted or an order issued under this part, or a violation of a license provision has
28 occurred, it may serve written notice of the violation on the alleged violator or the violator's agent. The notice

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1 must specify the law, rule, or license provision alleged to be violated and the facts alleged to constitute a
2 violation and may include an order to take necessary corrective action within a reasonable period of time, an
3 order assessing an administrative penalty pursuant to 75-10-542, or both. The order becomes final 30 days
4 after the notice is served unless the person named requests, in writing, a hearing before the board department.
5 On receipt of the request for a hearing, the board department shall schedule a hearing. Service by mail is
6 complete on the date of mailing.
7 (2)—If, after a hearing held under subsection (1), the board department finds that a violation has
8 occurred, it shall either affirm or change the department's order. An order may prescribe the date by which the
9 violation must cease and may prescribe time limits for particular action. If, after a hearing, the board department
10 finds that a violation has not occurred, it shall rescind the department's order.
11 (3)—The department shall make efforts to obtain voluntary compliance through warning, conference, or
12 any other appropriate means before issuing an order pursuant to subsection (1).
13 (4)—The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4,
14 part 6, apply to a hearing held under this section."
15
16 **Section 106.** Section 75-10-714, MCA, is amended to read:
17 "**75-10-714.—Administrative penalties.** (1) In lieu of proceeding under 75-10-711(5), the department
18 may assess penalties of not more than \$1,000 a day for each violation against a person liable under 75-10-
19 715(1) for a release or threat of release who has failed or refused to comply with an order issued by the
20 department pursuant to 75-10-711(4) or against a person who has failed or refused to comply with an order
21 issued by the department pursuant to 75-10-707(5).
22 (2)—In determining the amount of any penalty assessed pursuant to this section, the department shall
23 take into account the nature, circumstances, extent, and gravity of the noncompliance and, with respect to the
24 person liable under 75-10-715(1):
25 (a)—the person's ability to pay;
26 (b)—any prior history of violations;
27 (c)—the degree of culpability;
28 (d)—the economic benefit or savings, if any, resulting from the noncompliance; and

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1 (e)—any other matters that justice may require.
2 (3)—An administrative penalty may not be collected pursuant to this section unless the person charged
3 with the noncompliance is given notice and opportunity for a hearing with respect to the noncompliance. The
4 hearing is before the board of environmental review ~~the department~~. A hearing may be requested by submitting
5 a written request stating the reason for the request within 30 days after receipt of the notice of penalty
6 assessment.
7 (4)—The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4,
8 part 6, apply to a hearing held under this section.
9 (5)—Administrative penalties collected under this section must be deposited in the environmental
10 quality protection fund established in 75-10-704."

11
12 **Section 107.** Section 75-10-727, MCA, is amended to read:

13 "75-10-727.—**Institutional controls.** (1) An owner of real property may, with department approval,
14 restrict the use of the owner's real property to mitigate the risk posed to the public health, safety, and welfare
15 and the environment by imposing on the real property, without conveying the property or creating a dominant
16 and servient estate, an appropriate institutional control.

17 (2)—An institutional control restricting present and future real property rights is placed on a property by
18 filing a written instrument evidencing the restrictions to be placed on the use of the property with the county
19 clerk in the county in which the property is located.

20 (3)—An institutional control that restricts real property runs with the land and is binding on all
21 successors in interest to real property until the institutional control is removed.

22 (4)—An institutional control must be removed if there is not an unacceptable risk posed to public health,
23 safety, and welfare and the environment. An owner may request department approval to remove all or a portion
24 of the institutional controls from the real property. The department shall review the request and provide the
25 owner with its decision to approve or deny the request within 120 days from the department's receipt of the
26 request. If the department denies the request, it shall provide the owner with a written explanation of the denial.
27 A department decision to deny the request may be appealed to the board of environmental review ~~department~~
28 and conducted as a contested case proceeding pursuant to Title 2, chapter 4.

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1 (5)—If the department or the board approves an owner's request to remove all or a portion of the
2 institutional controls, the owner shall file the approval with the county clerk in the county in which the real
3 property is located."

4
5 **Section 108.** Section 75-10-732, MCA, is amended to read:

6 "75-10-732.—**Eligibility.** (1) A facility where there has been a release or threatened release of a
7 hazardous or deleterious substance that may present an imminent and substantial endangerment to the public
8 health, safety, or welfare or the environment may be eligible for voluntary cleanup procedures under this part,
9 except for facilities that meet one of the following criteria at the time of application for a voluntary cleanup plan:

10 (a)—a facility that is listed or proposed for listing on the national priorities list pursuant to 42 U.S.C.
11 9601, et seq.;

12 (b)—a facility for which an order has been issued or consent decree has been entered into pursuant to
13 this part;

14 (c)—a facility that is the subject of an agency order or an action filed in district court by any state
15 agency that addresses the release or threatened release of a hazardous or deleterious substance; or

16 (d)—a facility where the release or threatened release of a hazardous or deleterious substance is
17 regulated by the Montana Hazardous Waste Act and regulations under that act; or

18 (e)—a facility that is the subject of pending action under this part because the facility has been issued a
19 notice commencing a specified period of negotiations on an administrative order on consent.

20 (2)—Notwithstanding the provisions of subsections (1)(b) through (1)(e), the department may agree to
21 accept and may approve an application for a voluntary cleanup plan for a facility.

22 (3)—The department may determine that a facility that is potentially eligible for voluntary cleanup
23 exhibits complexities regarding protection of public health, safety, and welfare and the environment and that the
24 complexities should be addressed under an administrative order or consent decree pursuant to this part. This
25 determination may be made only after consultation with any person desiring to conduct a voluntary cleanup at
26 the facility.

27 (4)—If an applicant who submits an application for a voluntary cleanup plan disagrees with the
28 department's decision to reject the filing of the application under subsection (1) or (3) or disagrees with the

1 department's decision to disapprove the voluntary cleanup plan submitted pursuant to 75-10-736, the applicant
2 may, within 30 days of receipt of the department's written decision pursuant to 75-10-736, submit a written
3 request for a hearing before the board of environmental review department in reviewing a department decision
4 to reject an application under subsection (1) or (3) or to disapprove a voluntary cleanup plan submitted
5 pursuant to 75-10-736, the board department shall apply the standards of review specified in 2-4-704. The
6 hearing must be held within 2 months at the regular meeting of the board or at the time mutually agreed to by
7 the board, the department, and the applicant. The hearing and any appeals must be conducted in accordance
8 with the contested case proceedings pursuant to Title 2, chapter 4, parts 6 and 7. A hearing before the board
9 may not be requested regarding a decision of the department made pursuant to subsection (2)."

10

11 **Section 109.** Section 75-10-736, MCA, is amended to read:

12 **75-10-736.** Approval of voluntary cleanup plan — time limits — content of notice — expiration of

13 approval. (1) The department shall review for completeness, including adequacy and accuracy, in accordance
14 with the requirements of 75-10-734, the environmental assessment component of a voluntary cleanup plan and
15 shall provide a written completeness notice to the applicant within 30 days of receipt. The completeness notice
16 must note all deficiencies identified in the information submitted.

17 (2) Once the department determines that the environmental assessment component of a voluntary
18 cleanup plan is complete, the applicant may submit the remediation proposal. The department shall
19 review the remediation proposal for completeness, including adequacy and accuracy, in accordance with the
20 requirements of 75-10-734, and shall provide a written completeness notice to the applicant within 30 days of
21 receipt. The completeness notice must note all deficiencies identified in the information submitted.

22 (3) Once the department determines that the application for a voluntary cleanup plan is complete
23 pursuant to subsections (1) and (2), the department shall provide formal written notification of approval or
24 disapproval within 60 days unless the applicant and the department agree to an extension of the review to a
25 date certain. The review must be limited to a review of the materials submitted by the applicant, public
26 comments, and documents or information readily available to the department. The department shall
27 communicate with the applicant during the review period to ensure that the applicant has the opportunity to
28 address the public comments.



1 (4) (a) If the department receives five applications for review of either component of a voluntary
2 cleanup plan in a calendar month, including applications deferred from prior months, the department may notify
3 any additional applicants in that month that their plans must be reviewed in the order received. The 60-day
4 period for department completeness review of deferred applications must begin on the first day of the
5 subsequent month that each plan is eligible for review.

6 (b) The department shall discontinue accepting either component of voluntary cleanup applications
7 when 15 applications are pending and are being reviewed by the department. The department shall establish a
8 waiting list for applications and shall consider the applications in order of submittal.

9 (c) If the department has received multiple applications for a voluntary cleanup at the same facility,
10 the department shall notify all of the applicants and offer them the opportunity to submit a joint application.
11 (5) Consistent with the provisions of 75-10-707, the department may access the facility during review
12 of either component of the application and implementation of the voluntary cleanup plan to confirm information
13 provided by the applicant and verify that the cleanup is being conducted consistent with the approved plan.
14 (6) (a) The department shall approve a voluntary cleanup plan if the department concludes that the
15 plan meets the requirements specified in 75-10-734 and will attain a degree of cleanup and control of
16 hazardous or deleterious substances that complies with the requirements of 75-10-721.

17 (b) Except for the period necessary for the operation and maintenance of the approved remediation
18 proposal, the department may not approve a voluntary remediation proposal that would:

19 (i) take longer than 60 months after department approval to achieve the cleanup levels proposed by
20 the applicant under 75-10-734(3)(a)(i) and approved by the department; or

21 (ii) take longer than 120 months after department approval to achieve the cleanup levels for ground
22 water proposed by the applicant under 75-10-734(3)(a)(i) and approved by the department, including ground
23 water standards identified as applicable or relevant state or federal environmental requirements, criteria, or
24 limitations pursuant to 75-10-721.

25 (7) If a voluntary cleanup plan is not approved by the department, the department shall promptly
26 provide the applicant with a written statement of the reasons for denial. The denial may be appealed to the
27 board of environmental review department in accordance with the provisions of 75-10-732(4).

28 (8) The approval of a voluntary cleanup plan by the department applies only to conditions at the



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1 facility that are known to the department at the time of department approval. If a voluntary remediation proposal
2 is not initiated within 12 months and, except for the period necessary for the operation and maintenance of the
3 approved remediation proposal, is not completed within 60 months after approval by the department, the
4 department's approval lapses. However, the department may grant an extension of the time limit for completion
5 of the voluntary cleanup plan.
6 (9) If conditions are discovered during implementation of a voluntary cleanup plan that were not
7 identified in the environmental assessment component pursuant to subsection (1), affect the risk to public
8 health, safety, or welfare or the environment, and change the scope of the approved plan, the applicant shall
9 notify the department within 10 days of discovery. The department may require the applicant to submit an
10 amendment to the approved plan to address the conditions or may determine that a voluntary cleanup plan is
11 no longer appropriate pursuant to 75-10-732(3).
12 (10) Departmental approval is void if the applicant or the applicant's agents:
13 (a) fail to materially comply with the voluntary cleanup plan;
14 (b) submit materially misleading information in the application or during implementation of the
15 voluntary cleanup plan; or
16 (c) fail to report any newly discovered information to the department during the application process or
17 implementation of the voluntary cleanup plan regarding releases or threatened releases of hazardous or
18 deleterious substances within 10 days of discovery of that information.
19 (11) Within 60 days after completion of the approved remediation proposal described in the voluntary
20 cleanup plan approved by the department, the applicant shall provide to the department a certification from a
21 qualified environmental professional that the plan has been fully implemented, including all documentation
22 necessary to demonstrate the successful implementation of the plan, such as confirmation sampling, if
23 necessary.
24 (12) Except as provided in 75-10-738(2)(b), the department may not require financial assurance under
25 this part for voluntary cleanup plans approved under this section.
26 (13) If a person who would otherwise not be a liable person under 75-10-715(1) elects to undertake an
27 approved voluntary cleanup plan, the person may not become a liable person under 75-10-715(1) by
28 undertaking a voluntary cleanup if the person materially complies with the voluntary cleanup plan approved by

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1 the department pursuant to this section.
2 (14) Immunity from liability under this section does not apply to a release that is caused by conduct
3 that is negligent or grossly negligent or that constitutes intentional misconduct."
4
5 **Section 110.** Section 75-10-1201, MCA, is amended to read:
6 **"75-10-1201. Definitions.** As used in this part, the following definitions apply:
7 (1) "Board" means the board of environmental review provided for in 2-15-3502.
8 (2)(1) "Department" means the department of environmental quality provided for in 2-15-3501.
9 (3)(2) "Disposal" means the discharge, injection, deposit, dumping, spilling, leaking, or placing of
10 septage into or onto the land or water.
11 (4)(3) "Domestic sewage" means waste and wastewater from humans or household operations that
12 are discharged to or otherwise enter a treatment works.
13 (5)(4) "Industrial wastewater" means wastewater generated in a commercial or industrial process.
14 (6)(5) "Person" means an individual, firm, partnership, association, corporation, city, town, local
15 government entity, or other government or private entity, whether organized for profit or not.
16 (7)(6)(a) "Septage" means liquid or solid material removed from a septic tank, cesspool, portable
17 toilet, or similar treatment works that receives only domestic sewage.
18 (b) Septage does not include material removed from a septic tank, cesspool, or similar treatment
19 works that receives industrial wastewater and does not include grease removed from a grease trap at a
20 restaurant.
21 (8)(7) "Treatment works" means a publicly owned or privately owned device or system used to treat,
22 including to recycle and to reclaim, either domestic sewage or a combination of domestic sewage and industrial
23 waste of a liquid nature."
24
25 **Section 111.** Section 75-10-1221, MCA, is amended to read:
26 **"75-10-1221. Department revocation or denial of license.** The department may deny or revoke a
27 license after giving the applicant written notice and an opportunity for a hearing before the board. The decision
28 to deny or revoke a license may be made only after a finding that a business or disposal site cannot be

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operated or is not being operated in compliance with this part or a rule or order issued pursuant to this part. The hearing held before the board on a denial or revocation must be held pursuant to the provisions of the Montana Administrative Procedure Act."

Section 112. Section 75-10-1222, MCA, is amended to read:

"75-10-1222.—Administrative enforcement. (1) If the department believes that a violation of this part, a rule adopted under this part, or an order issued under this part has occurred, it may serve written notice of the violation, by certified mail, on the alleged violator or the violator's agent. The notice must specify the provision of this part, the rule, or the condition of approval alleged to have been violated and the facts alleged to constitute a violation. The notice must include an order to take necessary corrective action within a reasonable period of time. The time period must be stated in the order. Service is complete on the date of mailing.

(2) If the alleged violator does not request a hearing before the board department within 30 days of the date of service, the order is final. Failure to comply with a final order may subject the violator to an action commenced pursuant to 75-10-1224.

(3) If the alleged violator requests a hearing before the board within 30 days of the date of service, the board department shall schedule a hearing. After the hearing is held, the board department may:

(a) affirm or modify the department's order issued under subsection (1) if the board department finds that a violation has occurred; or

(b) rescind the department's order if the board department finds that a violation has not occurred.

(4) An order issued by the department or the board may set a date by which the violation must cease and set a time limit for the violator to correct the violation.

(5) (a) An action initiated by the department under this section may include an administrative penalty not to exceed \$500 for each day of violation. Administrative penalties collected under this section must be deposited in the account provided for in 75-10-1203.

(b) Penalties assessed under this section must be determined in accordance with the penalty factors in 75-4-1004.

(6) The contested case provisions of the Montana Administrative Procedure Act, provided for in Title 2, chapter 4, part 6, apply to a hearing under this section."

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Section 113. Section 75-11-203, MCA, is amended to read:

"75-11-203.—Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Board" means the board of environmental review provided for in 2-15-3502,

(2) (1) "Closure" or "to close" means the process of properly removing or filling in place an underground storage tank that is no longer in service.

(3) (2) "Department" means the department of environmental quality provided for in 2-15-3504.

(4) (3) "Inspection" means activities to inspect all or part of an underground storage tank system, including records relating to installation, operation, maintenance, and closure to determine compliance with applicable laws and rules relating to operation and maintenance.

(5) (4) "Inspector" means an individual who performs inspections of underground storage tank systems.

(6) (5) (a) "Installation" or "to install" means the placement of an underground storage tank system, including excavation, tank placement, backfilling, and piping of underground portions of the underground storage tank system that store or convey regulated substances. Installation includes repair or modification of an underground storage tank system through such means as tank relining or the repair or replacement of valves, fill pipes, piping, vents, or in-tank liquid level monitoring systems. Installation also means installation, repair, or modification of a leak detection device that is external to and not attached to the underground storage tank system and the installation, repair, or modification of a cathodic protection system.

(b) The terms do not include the process of conducting a precision (tightness) test to establish the integrity of the underground storage tank system.

(7) (6) "Installer" means an individual who installs or closes underground storage tank systems.

(8) (7) "License" means a license issued by the department under 75-11-204 or 75-11-210 to conduct the inspection, installation, or closure of underground storage tank systems.

(9) (8) "Licensed inspector" means an individual who holds a valid underground storage tank system inspector license.

(10) (9) "Licensed installer" means an individual who holds a valid underground storage tank system

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1 installer-license.

2 (11)(10) "Operator" means a person in control of or having responsibility for the operation;

3 maintenance, or management of an underground storage tank system.

4 (12)(11) "Owner" means a person who owns an underground storage tank system used for the

5 storage, use, or dispensing of regulated substances.

6 (13)(12) "Person" means an individual, firm, trust, estate, partnership, company, association,

7 corporation (whether organized for profit or not), city, town, local governmental entity, or any other

8 governmental or private entity.

9 (14)(13) "Regulated substance" means a regulated substance as defined in 75-11-503.

10 (15)(14) "Underground storage tank" or "underground storage tank system" means an underground

11 storage tank, as defined in 75-11-503, and, for purposes of this part, includes ancillary equipment designed to

12 prevent, detect, or contain a release from an underground storage tank system."

13

14 **Section 114.** Section 75-11-211, MCA, is amended to read:

15 "75-11-211. — Denial, modification, suspension, or revocation of installer or inspector license —

16 grounds. (1) The department may deny, modify, condition, suspend, or revoke a license if the installer or

17 inspector:

18 (a) — fails to achieve a passing grade on a written examination;

19 (b) — fails to pay the license fee imposed under this part;

20 (c) — commits fraud or deceit with respect to the license or permit application or an inspection report

21 submitted to the department;

22 (d) — has had suspended or revoked:

23 (i) — a license issued under this part; or

24 (ii) — a similar license in another state or territory; or

25 (e) — violates any state or federal law, rule, permit, or order relating to the installation or closure of an

26 underground storage tank system.

27 (2) — If the department modifies, conditions, suspends, or revokes a license, it shall inform the applicant

28 or license holder in writing of the reason for the action. The applicant or license holder may request a hearing

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1 before the board department. If the board department grants a hearing, the hearing must be held in accordance

2 with the provisions of the Montana Administrative Procedure Act."

3

4 **Section 115.** Section 75-11-218, MCA, is amended to read:

5 "75-11-218. — Administrative enforcement. (1) When the department believes that a person has

6 violated this part, a rule adopted under this part, or a permit provision, it may serve written notice of the violation

7 on the person or the person's agent. The notice must specify the alleged violation and the facts that constitute

8 the alleged violation. The notice may include an order to provide information pertaining to the installation,

9 closure, or inspection, an order to take necessary corrective action within a reasonable time as stated in the

10 order, or an order assessing an administrative penalty pursuant to 75-11-223. A notice and order must be

11 signed by the director of the department or the director's designee and must be served personally or by certified

12 mail upon the person or the person's agent. The order becomes final unless, within 30 days after the notice is

13 served, the person requests in writing a hearing before the board department. On receipt of the request, the

14 board department shall schedule a hearing. Service by mail is complete on the date of mailing.

15 (2) — If, pursuant to a hearing held under subsection (1), the board department finds that a violation has

16 occurred, it shall either affirm or modify the department's order. An order issued by the department or the board

17 may prescribe the date by which the violation must cease and may prescribe time limits for particular action. If,

18 after a hearing, the board department finds that a violation has not occurred, it shall rescind the department's

19 order.

20 (3) — In addition to or instead of issuing an order pursuant to subsection (1), the department may either:

21 (a) — require the alleged violator to appear before the board department for a hearing at a time and

22 place specified in the notice and answer the charges described in the notice of violation; or

23 (b) — initiate action under 75-11-219, 75-11-223, or 75-11-224.

24 (4) — This section does not prevent the board or department from attempting to obtain voluntary

25 compliance through issuance of a warning, a conference, or any other appropriate administrative or judicial

26 means.

27 (5) — The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4,

28 part 6, apply to a hearing held under this section."

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1
2 **Section 116.** Section 75-11-219, MCA, is amended to read:
3 **"75-11-219.—Injunctions.** The department may institute and maintain in the name of the state actions
4 for injunctive relief as provided in Title 27, chapter 19, to:
5 (1) immediately restrain any person from engaging in unauthorized activity that is endangering public
6 health or causing damage to the environment;
7 (2) enjoin a violation of this part, a rule adopted under this part, or an order of the department or the
8 board; or
9 (3) require compliance with this part, a rule adopted under this part, or an order of the department or
10 the board;"

11
12 **Section 117.** Section 75-11-223, MCA, is amended to read:
13 **"75-11-223.—Civil and administrative penalties.** (1) (a) A person who violates a provision of this part,
14 a rule adopted under this part, or an order of the department or the board is subject to an administrative penalty
15 not to exceed \$500 for each violation or a civil penalty not to exceed \$10,000 for each violation. If an installer or
16 an inspector who is an employee is in violation, the employer of that installer or that inspector is the entity that
17 is subject to the provisions of this section unless the violation is the result of a grossly negligent or willful act.
18 Each day of violation of this part, a rule adopted under this part, or an order constitutes a separate violation.
19 (b) Penalties assessed under this subsection (1) must be determined in accordance with the penalty
20 factors in 75-1-1001.
21 (2) The department may institute and maintain in the name of the state any enforcement proceedings
22 under this section. The enforcement or collection action must be brought in the district court of the county in
23 which the violation occurred or, if mutually agreed upon by the parties, in the district court of the first judicial
24 district, Lewis and Clark County. Upon request of the department, the attorney general or the county attorney of
25 the county where the violation occurred shall petition the district court to impose, assess, and recover the civil
26 penalty.
27 (3) Action under this section does not bar:
28 (a) enforcement of this part, rules adopted under this part, orders of the department or the board, or

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1 terms of a license or permit by injunction or other appropriate remedy; or
2 (b) action under 75-11-224."

3
4 **Section 118.** Section 75-11-224, MCA, is amended to read:
5 **"75-11-224.—Criminal penalties.** (1) Any owner or operator who knowingly installs or closes an
6 underground storage tank system without a permit and either an inspection or the use of the services of a
7 licensed installer as required in 75-11-209; any installer who knowingly installs or closes an underground
8 storage tank system without being licensed; or any person who knowingly makes any false statements or
9 representations in any application, permit, report, licensing form, or other document filed or maintained as
10 required by this part or required by rules adopted under this part is subject to a fine not to exceed \$10,000 for
11 each violation or imprisonment not to exceed 6 months, or both. Each day of violation constitutes a separate
12 violation.
13 (2) A person convicted of a second or subsequent criminal violation is subject to a fine not to exceed
14 \$20,000 for each violation or imprisonment not to exceed 1 year, or both. Each day of violation constitutes a
15 separate violation.
16 (3) Action under this section does not bar enforcement of this part, rules adopted under this part,
17 orders of the department or the board, or terms of a license or permit by injunction or other appropriate
18 remedy."

19
20 **Section 119.** Section 75-11-503, MCA, is amended to read:
21 **"75-11-503.—Definitions.** Unless the context requires otherwise, in this part, the following definitions
22 apply:
23 (1) "Board" means the board of environmental review provided for in 2-15-3502.
24 (2) (1) "Department" means the department of environmental quality provided for in 2-15-3501.
25 (3) (2) "Dispose" or "disposal" means the discharge, injection, deposit, dumping, spilling, leaking, or
26 placing of any regulated substance into or onto the land or water so that the regulated substance or any
27 constituent of the regulated substance may enter the environment or be emitted into the air or discharged into
28 any waters, including ground water.

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1 ~~(4)(3)~~—"Person" means the United States, an individual, firm, trust, estate, partnership, company,
2 association, corporation, city, town, local governmental entity, or any other governmental or private entity,
3 whether organized for profit or not.
4 ~~(5)(4)~~—"Petroleum mixing zone" means an area where water quality standards for petroleum and
5 petroleum constituents may be exceeded subject to the conditions of 75-11-508 and consistent with rules
6 adopted under 75-11-318, 75-11-319, and 75-11-505.
7 ~~(6)(5)~~—"Regulated substance":
8 (a)—means:
9 (i)—a hazardous substance as defined in 75-10-602; or
10 (ii)—petroleum, including crude oil or any fraction of crude oil, that is liquid at standard conditions of
11 temperature and pressure (60 degrees F and 14.7 pounds per square inch absolute);
12 (b)—does not include a substance regulated as a hazardous waste under Title 75, chapter 10, part 4.
13 ~~(7)(6)~~—"Storage" means the actual or intended containment of regulated substances, either on a
14 temporary basis or for a period of years.
15 ~~(8)(7)~~—"Underground storage tank" or "tank":
16 (a)—means, except as provided in subsections (8)(b)(i) through (8)(b)(xii) subsection (7)(b):
17 (i)—any one or a combination of tanks used to contain a regulated substance, the volume of which is
18 10% or more beneath the surface of the ground;
19 (ii)—any underground pipes used to contain or transport a regulated substance and connected to a
20 storage tank, whether the storage tank is entirely above ground, partially above ground, or entirely under
21 ground; and
22 (iii)—ancillary equipment designed to prevent, detect, or contain a release from an underground storage
23 tank;
24 (b)—does not include:
25 (i)—a farm or residential tank that was installed as of April 27, 1995, that has a capacity of 1,100
26 gallons or less and that is used for storing motor fuel for noncommercial purposes;
27 (ii)—a farm or residential tank that was installed as of April 27, 1995, that has a capacity of 1,100 gallons
28 or less and that is used for storing heating oil for consumptive use on the premises where it is stored;

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1 ~~(iii)~~—farm or residential underground pipes that were installed as of April 27, 1995, and that are used to
2 contain or to transport motor fuels for noncommercial purposes or heating oil for consumptive use on the
3 premises where it is stored from an aboveground storage tank with a capacity of 1,100 gallons or less;
4 ~~(iv)~~—a septic tank;
5 ~~(v)~~—a pipeline facility, including gathering lines, regulated under:
6 (A)—the Natural Gas Pipeline Safety Act of 1968, 49 U.S.C. 1671, et seq.;
7 (B)—the Hazardous Liquid Pipeline Safety Act of 1979, 49 U.S.C. 2001, et seq.; or
8 (C)—state law comparable to the provisions of law referred to in subsection (8)(b)(v)(A) or
9 (8)(b)(v)(B) ~~(7)(b)(v)(A) or (7)(b)(v)(B)~~ if the facility is intrastate;
10 ~~(vi)~~—a surface impoundment, pit, pond, or lagoon;
11 ~~(vii)~~—a storm water or wastewater collection system;
12 ~~(viii)~~—a flow-through process tank;
13 ~~(ix)~~—a liquid trap or associated gathering lines directly related to oil or gas production and gathering
14 operations;
15 ~~(x)~~—a storage tank situated in an underground area, such as a basement, cellar, mine, draft, shaft, or
16 tunnel, if the storage tank is situated upon or above the surface of the floor;
17 ~~(xi)~~—any pipe connected to a tank described in subsections (8)(b)(i) through (8)(b)(ix) ~~(7)(b)(i) through~~
18 ~~(7)(b)(ix)~~; or
19 ~~(xii)~~—underground pipes connected to an aboveground storage tank at a petroleum refinery that is
20 subject to:
21 (A)—facilitywide corrective action permit provisions under 75-10-406 or the federal Resource
22 Conservation and Recovery Act of 1976, 42 U.S.C. 6901 through 6987, as amended; or
23 (B)—a facilitywide corrective action order under 75-10-425 or the federal Resource Conservation and
24 Recovery Act of 1976, 42 U.S.C. 6901 through 6987, as amended."
25
26 **Section 120.** Section 75-11-505, MCA, is amended to read:
27 **"75-11-505. Administrative rules -- underground storage tanks -- petroleum mixing zones. (1)**
28 The department may adopt, amend, or repeal rules for the prevention and correction of leakage from

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- 1 underground storage tanks, including:
- 2 (a) reporting by owners and operators;
- 3 (b) financial responsibility;
- 4 (c) release detection, prevention, and corrective action;
- 5 (d) procedures and standards for the issuance, nonissuance, renewal, nonrenewal, modification,
- 6 revocation, suspension, and enforcement of permits authorizing the operation of underground storage tanks;
- 7 (e) standards for design, construction, installation, and closure;
- 8 (f) development of a schedule of annual fees, not to exceed \$108 for a tank over 1,100 gallons and
- 9 not to exceed \$36 for a tank 1,100 gallons or less, for each tank, for tank registration to defray state and local
- 10 costs of implementing an underground storage tank program. The department may prorate fees to cover
- 11 periods not equal to 12 months in order to provide staggered scheduling of renewal dates.
- 12 (g) a system for assessment of administrative penalties, notice, and appeals under 75-11-525; and
- 13 (h) delegation of authority and funds to local agents for inspections and implementation. The
- 14 delegation of authority to local agents must complement and may not duplicate existing authority for
- 15 implementation of rules adopted by the department of justice that relate to underground storage tanks.
- 16 (2) In accordance with 75-11-508, the department:
- 17 (a) shall adopt rules governing the inclusion of a petroleum mixing zone, as defined in 75-11-503, in a
- 18 corrective action plan; and
- 19 (b) may incorporate by reference rules adopted by the board of environmental review pursuant to 75-
- 20 5-301 and 75-5-303 related to mixing zones for ground water."

21

22 **Section 121.** Section 75-11-508, MCA, is amended to read:

23 **"75-11-508. Corrective action -- petroleum mixing zones.** (1) A corrective action plan prepared

24 pursuant to 75-11-309 may include the use of a petroleum mixing zone, as defined in 75-11-503, in conjunction

25 with the final remediation and resolution of a petroleum release.

- 26 (2) If a petroleum mixing zone is included in a corrective action plan, it may be established only when:
- 27 (a) all source material has been removed to the maximum extent practicable;
- 28 (b) the extent of petroleum contamination has been defined;

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- 1 (c) natural breakdown or attenuation is occurring within the plume; and
- 2 (d) no further corrective action is reasonably required at the site.
- 3 (3) The boundary of a petroleum mixing zone established in accordance with this section must be
- 4 contained within the boundary of the property on which the petroleum release originated unless a recorded
- 5 easement, a restrictive covenant, or another institutional control approved by the department on an adjoining
- 6 property allows the petroleum mixing zone to extend onto the adjoining property.
- 7 (4) Monitoring of a petroleum mixing zone may not be required unless there is a unique, overriding,
- 8 site-specific, impact-related reason to require monitoring.
- 9 (5) At the downgradient boundary of a petroleum mixing zone, the concentration of any petroleum
- 10 constituent, including benzene, may not exceed a water quality standard adopted by the board pursuant to 75-
- 11 5-301.
- 12 (6) If a petroleum mixing zone is established and maintained:
- 13 (a) the petroleum release is considered to be resolved;
- 14 (b) no further corrective action for the petroleum release is required; and
- 15 (c) the department shall issue a no-further-action letter to the owner or operator stating that a
- 16 petroleum mixing zone has been established for the release and describing any conditions required to maintain
- 17 the petroleum mixing zone.
- 18 (7) A corrective action plan approved by the department pursuant to 75-11-309 may be amended to
- 19 include a petroleum mixing zone in accordance with this section, including a corrective action plan approved
- 20 prior to April 15, 2011."

21

22 **Section 122.** ~~Section 75-11-509, MCA, is amended to read:~~

23 ~~"75-11-509. -- Inspections -- permits. (1) The owner or operator of an active underground storage tank~~

24 ~~must have the tank inspected for compliance with this part by January 1, 2002, and at least once every 3 years~~

25 ~~thereafter by an inspector who is licensed pursuant to Title 75, chapter 11, part 2, to perform underground~~

26 ~~storage tank inspections. The inspector may not be:~~

27 ~~(a) the owner or operator of the tank;~~

28 ~~(b) an employee of the owner or operator; or~~

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(c) ~~for the first inspection required by this subsection (1) and for a period of 3 years after the installation or modification of the tank was completed, the installer who installed or modified the tank and whose name or signature was on the permit required by 75-11-212.~~

(2) ~~The owner or operator of an inactive underground storage tank shall comply with requirements for testing, inspection, recordkeeping, and reporting provided in rules adopted pursuant to this part.~~

(3) ~~The department may by rule authorize temporary permits for the installation, testing, and operation of underground storage tanks. The requirements in subsection (8) for a 3-year permit term and for permit issuance only after inspection by a licensed inspector do not apply to temporary permits.~~

(4) ~~The department shall by rule provide:~~

(a) ~~requirements for the scope and timing of inspections; and~~

(b) ~~requirements for testing, inspection, recordkeeping, and reporting for inactive tanks to ensure that these tanks do not pose a threat to public health, safety, or the environment while inactive or upon their return to active status.~~

(5) ~~The inspector shall provide the owner or operator with an inspection report that meets the requirements of rules adopted by the department to ensure compliance with this part and rules adopted pursuant to this part.~~

(6) ~~The owner or operator shall retain the original inspection report and mail a copy to the department.~~

(7) ~~If the inspection report indicates violations, the owner or operator shall correct the violations and obtain a followup inspection. Followup inspection reports must be provided to the owner or operator and to the department.~~

(8) ~~A person may not place a regulated substance in an underground storage tank unless the owner or operator has been issued a valid permit from the department for the tank. Permits must be issued for a term of 3 years. The department may not issue or renew a permit unless the owner or operator has filed with the department an inspection report by a licensed inspector. Prior to issuing or renewing a permit, the department shall determine, on the basis of the inspection report and other relevant information, whether the operation and maintenance of the tank were in compliance with this part and rules adopted pursuant to this part on the date of inspection.~~

(9) ~~The department may determine to not issue or not renew a permit for a tank if the department~~

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finds that there has been significant noncompliance with this part or with rules, permits, or orders issued pursuant to this part. If the department proposes to not issue or not renew a permit, it must have a written notice letter served personally or by certified mail on the owner or operator informing the owner or operator of the reason for the action. The owner or operator may request a hearing before the board ~~department~~. The hearing request must be in writing and must be filed with the board no later than 30 days after the service of the notice letter. The contested case provisions of the Montana Administrative Procedure Act, provided for in Title 2, chapter 4, part 6, apply to a hearing conducted under this section."

Section 123. Section 75-11-512, MCA, is amended to read:

"75-11-512.—Administrative enforcement. (1) When the department believes that a violation of this part or a rule adopted under this part has occurred, it may serve written notice of the violation personally or by certified mail on the alleged violator or the violator's agent. The notice must specify the provision of this part or the rule alleged to be violated and the facts alleged to constitute a violation and may include an order to take necessary corrective action within a reasonable period of time stated in the order. The order becomes final unless, within 30 days after the notice is served, the person named requests, in writing, a hearing before the board ~~department~~. On receipt of the request, the board ~~department~~ shall schedule a hearing. Service by mail is complete on the date of receipt.

(2) If, after a hearing held under subsection (1), the board ~~department~~ finds that a violation has occurred, it shall either affirm or modify the department's order. An order issued by the department or by the board may prescribe the date by which the violation must cease and may prescribe time limits for particular action. If, after hearing, the board ~~department~~ finds that a violation has not occurred, it shall rescind the department's order.

(3) In addition to or instead of issuing an order pursuant to subsection (1), the department may:

(a) require the alleged violator to appear before the board or department, by subpoena or subpoena duces tecum, for a hearing at a time and place specified in the notice to answer the charges complained of or to provide information regarding the alleged violation or its actual or potential impact on the public health and welfare or the environment;

(b) initiate action under 75-11-513, 75-11-514, or 75-11-516; or

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1 (c)—assess administrative penalties and issue corrective action orders under 75-11-525;
2 (4)—In the case of disobedience of any subpoena issued and served under this section or of the
3 refusal of any witness to testify as to any material matter with regard to which the witness may be interrogated
4 in a hearing or investigation before the board or the department, the board or department may apply to any
5 district court in the state for an order to compel compliance with the subpoena or the giving of testimony. The
6 court shall hear the matter as expeditiously as possible. If the disobedience or refusal is found to be unjustified,
7 the court shall enter an order requiring compliance. Disobedience of the order is punishable by contempt of
8 court in the same manner and by the same procedures as is provided for like conduct committed in the course
9 of civil actions in district court.
10 (5)—If a person fails to comply with an order issued pursuant to subsection (1) or (3) within the time
11 allowed in the order, the department may enter the property on which the underground storage tank that is in
12 violation is located and temporarily close the tank. If the department finds that permanent closure is necessary
13 to prevent substantial environmental harm or because the owner or operator is unlikely to comply with the
14 order, it may permanently close the tank.
15 (6)—This section does not prevent the board or department from making efforts to obtain voluntary
16 compliance through warning, conference, or any other appropriate means."

17
18 **Section 124.** Section 75-11-513, MCA, is amended to read:
19 "75-11-513.—Injunctions.—The department may institute and maintain, in the name of the state, actions
20 for injunctive relief as provided in Title 27, chapter 19, to:

21 (1)—immediately restrain any person from engaging in any unauthorized activity that is endangering or
22 causing damage to the public health or to the environment;
23 (2)—enjoin a violation of this part, a rule adopted under this part, or an order of the department or the
24 board; or
25 (3)—require compliance with this part, a rule adopted under this part, or an order of the department or
26 the board."

27
28 **Section 125.** Section 75-11-516, MCA, is amended to read:

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1 "75-11-516.—Civil penalties.—(1) (a) A person who violates any provision of this part, a rule adopted
2 under this part, or an order of the department or the board is subject to a civil penalty not to exceed \$10,000 for
3 each violation. Each day of violation constitutes a separate violation.
4 (b) Penalties assessed under this subsection (1) must be determined in accordance with the penalty
5 factors in 75-1-1001.
6 (2)—The department may institute and maintain in the name of the state any enforcement proceedings
7 under this section. Upon request of the department, the attorney general or the county attorney of the county of
8 violation shall petition the district court to impose, assess, and recover the civil penalty. Penalties are also
9 recoverable in an action brought by the department. The action must be brought in the district court of the
10 county in which the violation occurred or, if mutually agreed on by the parties in the action, in the district court of
11 the first judicial district, Lewis and Clark County.
12 (3)—Action under this section does not bar enforcement of this part, rules adopted under this part, or
13 orders of the department or the board.
14 (4)—Money collected under this section must be deposited in the state general fund."

15
16 **Section 126.** Section 75-11-525, MCA, is amended to read:

17 "75-11-525.—Administrative penalties for violations — appeals — venue.—(1) (a) A person who
18 violates any of the provisions of this part or any rules promulgated under the authority of this part may be
19 assessed and ordered by the department to pay an administrative penalty not to exceed \$500 for each
20 violation. This limitation on administrative penalties applies only to penalties assessed under this section. Each
21 occurrence of the violation and each day that it remains uncorrected constitutes a separate violation. The
22 department may suspend a portion of the administrative penalty assessed under this section if the condition
23 that caused the assessment of the penalty is corrected within a specified time. Assessment of an administrative
24 penalty under this section may be made in conjunction with any order or other administrative action authorized
25 by this chapter.

26 (b) Penalties assessed under this subsection (1) must be determined in accordance with the penalty
27 factors in 75-1-1001.

28 (2)—When the department assesses an administrative penalty under this section, it must have written

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1 notice served personally or by certified mail on the alleged violator or the violator's agent. For purposes of this
2 chapter, service by mail is complete on the day of receipt. The notice must state:
3 (a) the provision alleged to be violated;
4 (b) the facts alleged to constitute the violation;
5 (c) the amount of the administrative penalty assessed under this section;
6 (d) the amount, if any, of the penalty to be suspended upon correction of the condition that caused the
7 assessment of the penalty;
8 (e) the nature of any corrective action that the department requires, whether or not a portion of the
9 penalty is to be suspended;
10 (f) as applicable, the time within which the corrective action is to be taken and the time within which
11 the administrative penalty is to be paid; and
12 (g) the right to appeal or to a hearing to mitigate the penalty assessed.
13 (3) A person assessed a penalty under this section may request a hearing before the board
14 department to either contest the alleged violation or request mitigation of the penalty. The contested case
15 provisions of the Montana Administrative Procedure Act, provided for in Title 2, chapter 4, part 6, apply to a
16 hearing conducted under this section. If a hearing is held under this section, it must be held in Lewis and Clark
17 County or the county in which the alleged violation occurred.
18 (4) If the department is unable to collect an administrative penalty assessed under this section or if a
19 person fails to pay all or any portion of an administrative penalty assessed under this section, the department
20 may take action in district court to recover the penalty amount and any additional amounts assessed or sought
21 under this chapter. The action must be brought in the district court of the county in which the violation occurred
22 or, if mutually agreed on by the parties in the action, in the district court of the first judicial district, Lewis and
23 Clark County.
24 (5) Action under this section does not bar action under this chapter or any other remedy available to
25 the department for violations of underground storage tank laws or rules promulgated under those laws.
26 (6) Administrative penalties collected under this section must be deposited in the state general fund."
27
28 **Section 127.** Section 75-20-104, MCA, is amended to read:

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1 **"75-20-104.—Definitions.** In this chapter, unless the context requires otherwise, the following
2 definitions apply:
3 (1) "Addition thereto" means the installation of new machinery and equipment that would significantly
4 change the conditions under which the facility is operated.
5 (2) "Application" means an application for a certificate submitted in accordance with this chapter and
6 the rules adopted under this chapter.
7 (3) (a) "Associated facilities" includes but is not limited to transportation links of any kind, aqueducts,
8 diversion dams, pipelines, storage ponds, reservoirs, and any other device or equipment associated with the
9 delivery of the energy form or product produced by a facility.
10 (b) The term does not include a transmission substation, a switchyard, voltage support, or other
11 control equipment or a facility or a natural gas or crude oil gathering line 25 inches or less in inside diameter.
12 (4) "Board" means the board of environmental review provided for in 2-15-3502.
13 (5)(4) "Certificate" means the certificate of compliance issued by the department under this chapter
14 that is required for the construction or operation of a facility.
15 (6)(5) "Commence to construct" means:
16 (a) any clearing of land, excavation, construction, or other action that would affect the environment of
17 the site or route of a facility but does not mean changes needed for temporary use of sites or routes for
18 nonutility purposes or uses in securing geological data, including necessary borings to ascertain foundation
19 conditions;
20 (b) the fracturing of underground formations by any means if the activity is related to the possible
21 future development of a gasification facility or a facility employing geothermal resources but does not include
22 the gathering of geological data by boring of test holes or other underground exploration, investigation, or
23 experimentation;
24 (c) the commencement of eminent domain proceedings under Title 70, chapter 30, for land or rights
25 of way upon or over which a facility may be constructed;
26 (d) the relocation or upgrading of an existing facility defined by subsection (9)(a) or (9)(b), (8)(a) or
27 (8)(b), including upgrading to a design capacity covered by subsection (9)(a), (8)(a), except that the term does
28 not include normal maintenance or repair of an existing facility.

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1 ~~(7)(6)~~—(a)—“Commencement of acquisition of right-of-way” means the actual, defined legal transfer of
2 property;
3 ~~(b)—The term does not mean preliminary discussions, option agreements that are not within 60 days of~~
4 ~~commencement of acquisition, letters of intent, or other documents that do not conclusively result in the legal~~
5 ~~transfer of property;~~
6 ~~(8)(7)~~—“Department” means the department of environmental quality provided for in 2-15-3504;
7 ~~(9)(8)~~—“Facility” means, subject to 75-20-1202:
8 ~~(a)—each electric transmission line and associated facilities of a design capacity of more than 69~~
9 ~~kilovolts, except that the term:~~
10 ~~(i)—does not include an electric transmission line and associated facilities of a design capacity of 230~~
11 ~~kilovolts or less and 10 miles or less in length;~~
12 ~~(ii)—does not include an electric transmission line with a design capacity of more than 69 kilovolts for~~
13 ~~which the person planning to construct the line has obtained right-of-way agreements or options for a right-of-~~
14 ~~way from more than 75% of the owners who collectively own more than 75% of the property along the~~
15 ~~centerline;~~
16 ~~(iii)—does not include electric transmission lines that are collectively less than 150 miles in length and~~
17 ~~are required under state or federal regulations and laws, with respect to reliability of service, for an electrical~~
18 ~~generation facility, as defined in 15-24-3001(4), or a wind generation facility, biomass generation facility, or~~
19 ~~energy storage facility, as defined in 15-6-157, to interconnect to a regional transmission grid or secure firm~~
20 ~~transmission service to use the grid for which the person planning to construct the line or lines has obtained~~
21 ~~right-of-way agreements or options for a right-of-way from more than 75% of the owners who collectively own~~
22 ~~more than 75% of the property along the centerline or centerlines;~~
23 ~~(iv)—does not include an upgrade to an existing transmission line of a design capacity of 50 kilovolts or~~
24 ~~more to increase that line’s capacity, including construction outside the existing easement or right-of-way,~~
25 ~~Except for a newly acquired easement or right-of-way necessary to comply with electromagnetic field~~
26 ~~standards, a newly acquired easement or right-of-way outside the existing easement or right-of-way as~~
27 ~~described in this subsection (9)(a)(iv) (8)(a)(iv) may not exceed a total of 10 miles in length or be more than~~
28 ~~10% of the existing transmission right-of-way, whichever is greater, and the purpose of the easement must be~~

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1 to avoid sensitive areas or inhabited areas or conform to state or federal safety, reliability, and operational
2 standards designed to safeguard the transmission network and protect electrical workers and the public;
3 ~~(v)—does not include a transmission substation, a switchyard, voltage support, or other control~~
4 ~~equipment;~~
5 ~~(vi)—does not include an energy storage facility, as defined in 15-6-157;~~
6 ~~(b)—(i)—each pipeline, whether partially or wholly within the state, greater than 25 inches in inside~~
7 ~~diameter and 50 miles in length, and associated facilities, except that the term does not include:~~
8 ~~(A)—a pipeline within the boundaries of the state that is used exclusively for the irrigation of agricultural~~
9 ~~crops or for drinking water; or~~
10 ~~(B)—a pipeline greater than 25 inches in inside diameter and 50 miles in length for which the person~~
11 ~~planning to construct the pipeline has obtained right-of-way agreements or options for a right-of-way from more~~
12 ~~than 75% of the owners who collectively own more than 75% of the property along the centerline;~~
13 ~~(ii)—each pipeline, whether partially or wholly within the state, greater than 17 inches in inside diameter~~
14 ~~and 30 miles in length, and associated facilities used to transport coal suspended in water;~~
15 ~~(c)—any use of geothermal resources, including the use of underground space in existence or to be~~
16 ~~created, for the creation, use, or conversion of energy, designed for or capable of producing geothermally~~
17 ~~derived power equivalent to 50 megawatts or more or any addition thereto, except pollution control facilities~~
18 ~~approved by the department and added to an existing plant, except that the term does not include a~~
19 ~~compressed air energy storage facility, as defined in 15-6-157; or~~
20 ~~(d)—for the purposes of 75-20-204 only, a plant, unit, or other facility capable of generating 50~~
21 ~~megawatts of hydroelectric power or more or any addition thereto;~~
22 ~~(10)(9)—“Person” means any individual, group, firm, partnership, corporation, limited liability company,~~
23 ~~cooperative, association, government subdivision, government agency, local government, or other organization~~
24 ~~or entity.~~
25 ~~(11)(10)—“Sensitive areas” means government-designated areas that have been recognized for their~~
26 ~~importance to Montana’s wildlife, wilderness, culture, and historic heritage, including but not limited to national~~
27 ~~wildlife refuges, state wildlife management areas, federal areas of critical environmental concern, state parks~~
28 ~~and historic sites, designated wilderness areas, wilderness study areas, designated wild and scenic rivers, or~~

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1 national parks, monuments, or historic sites.
2 ~~(12)(11)~~ "Transmission substation" means any structure, device, or equipment assemblage, commonly
3 located and designed for voltage regulation, circuit protection, or switching necessary for the construction or
4 operation of a proposed transmission line.
5 ~~(13)(12)~~ "Transmission reliability agencies" means the federal energy regulatory commission, the
6 western electricity coordinating council, the national electric reliability council, and the midwest reliability
7 organization.
8 ~~(14)(13)~~ "Upgrade" means to increase the electrical carrying capacity of a transmission line by actions
9 including but not limited to:
10 (a) installing larger conductors;
11 (b) replacing insulators;
12 (c) replacing pole or tower structures;
13 (d) changing structure spacing, design, or guying; or
14 (e) installing additional circuits.
15 ~~(15)(14)~~ "Utility" means any person engaged in any aspect of the production, storage, sale, delivery, or
16 furnishing of heat, electricity, gas, hydrocarbon products, or energy in any form for ultimate public use."

17
18 **Section 128.** Section 75-20-105, MCA, is amended to read:

19 **"75-20-105. Adoption of rules.** The board department may adopt rules implementing the provisions
20 of this chapter."
21

22 **Section 129.** Section 75-20-201, MCA, is amended to read:

23 **"75-20-201.—Certificate required — operation in conformance — certificate for nuclear facility —**
24 **applicability to federal facilities.** (1) Except for a facility under diligent onsite physical construction or in
25 operation on January 1, 1973, a person may not commence to construct a facility in the state without first
26 applying for and obtaining a certificate of compliance issued with respect to the facility by the department.
27 (2) — A facility with respect to which a certificate is issued may not be constructed, operated, or
28 maintained except in conformity with the certificate and any terms, conditions, and modifications contained

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1 within the certification.
2 (3) — A certificate may only be issued pursuant to this chapter.
3 (4) — If the department decides to issue a certificate for a nuclear facility, it shall report the
4 recommendation to the applicant and may not issue the certificate until the recommendation is approved by a
5 majority of the voters in a statewide election called by initiative or referendum according to the laws of this
6 state.
7 (5) — A person that proposes to construct an energy-related project that is not defined as a facility
8 pursuant to 75-20-104(9) ~~75-20-104(8)~~ may petition the department to review the energy-related project under
9 the provisions of this chapter. The construction or installation of an energy storage facility, as defined in 15-6-
10 157, is not considered an energy-related project under the provisions of this chapter. A certificate for the
11 construction or installation of an energy storage facility is not required under this chapter.
12 (6) — This chapter applies, to the fullest extent allowed by federal law, to all federal facilities and to all
13 facilities over which an agency of the federal government has jurisdiction.
14 (7) — All judicial challenges of certificates for projects with a project cost, as determined by the court, of
15 more than \$4 million must have precedence over any civil cause of a different nature pending in that court. If
16 the court determines that the challenge was without merit or was for an improper purpose, such as to harass, to
17 cause unnecessary delay, or to impose needless or increased cost in litigation, the court may award attorney
18 fees and costs incurred in defending the action."
19

20 **Section 130.** Section 75-20-207, MCA, is amended to read:

21 **"75-20-207.—Notice requirement for certain electric transmission lines.** Whenever a person plans
22 to construct an electric transmission line or associated facilities under the provisions of 75-20-104(9)(a)(ii) ~~75-~~
23 ~~20-104(8)(a)(ii)~~, it must provide public notice to persons residing in the area in which any portion of the electric
24 transmission facility may be located and to the department. This notice must be made no less than 60 days
25 prior to the commencement of acquisition of right of way as defined in 75-20-104 by publication of a summary
26 describing the transmission facility and the proposed location of the facility in those newspapers that will
27 substantially inform those persons of the construction and by mailing a summary to the department. The notice
28 must inform the property owners of their rights under this chapter concerning the location of the facility and that

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1 more information concerning their rights may be obtained from the department."

2

3 **Section 131.** Section 75-20-208, MCA, is amended to read:

4 ~~"75-20-208.—Certain electric transmission lines—verification of requirements.—(1) Prior to~~

5 constructing a transmission line under 75-20-104(9)(a)(ii), ~~75-20-104(8)(a)(iii), the person planning to construct~~
6 ~~the line shall provide to the department within 36 months of the date of the public notice provided under 75-20-~~
7 ~~207, unless extended by the department for good cause:~~

8 (a) ~~copies of the right-of-way agreements or options for a right-of-way containing sufficient information~~
9 ~~to establish landowner consent to construct the line; and~~

10 (b) ~~sufficient information for the department to verify that the requirements of 75-20-104(9)(a)(ii), 75-~~
11 ~~20-104(8)(a)(ii) are satisfied.~~

12 (2) ~~The provisions of 75-20-104(9)(a)(ii), 75-20-104(8)(a)(iii) do not apply to any facility for which public~~
13 ~~notice under 75-20-207 has been given but for which the requirements of subsection (1) of this section have not~~
14 ~~been complied with."~~

15

16 **Section 132.** Section 75-20-241, MCA, is amended to read:

17 ~~"75-20-241.—Application—filing and contents—proof of service and notice.—(1) (a) An applicant~~
18 ~~shall file with the department an application for a certificate under this chapter and for the permits required~~
19 ~~under the laws administered by the department in the form that is required under applicable rules, containing~~
20 ~~the following information:~~

21 (i) ~~a description of the proposed location and of the facility to be built;~~

22 (ii) ~~a summary of any preexisting studies that have been made of the impact of the facility;~~

23 (iii) ~~for facilities defined in 75-20-104(9)(a) and (9)(b), 75-20-104(8)(a) and (8)(b), a statement~~
24 ~~explaining the need for the facility, a description of reasonable alternate locations for the facility, a general~~
25 ~~description of the comparative merits and detriments of each location submitted, and a statement of the~~
26 ~~reasons why the proposed location is best suited for the facility;~~

27 (iv) ~~(A) for facilities as defined in 75-20-104(9)(a) and (9)(b), 75-20-104(8)(a) and (8)(b), baseline data~~
28 ~~for the primary and reasonable alternate locations; or~~

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1 (B) ~~for facilities as defined in 75-20-104(9)(c), 75-20-104(8)(c), baseline data for the proposed~~

2 ~~location and, at the applicant's option, any alternative locations acceptable to the applicant for siting the facility;~~

3 (v) ~~at the applicant's option, an environmental study plan to satisfy the requirements of this chapter;~~

4 and

5 (vi) ~~other information that the applicant considers relevant or that the department by order or rule may~~
6 ~~require.~~

7 (b) ~~If a copy or copies of the studies referred to in subsection (1)(a)(ii) are filed with the department,~~
8 ~~the copy or copies must be available for public inspection.~~

9 (2) ~~An application may consist of an application for two or more facilities in combination that are~~
10 ~~physically and directly attached to each other and are operationally a single operating entity.~~

11 (3) ~~The copy of the application must be accompanied by a notice specifying the date on or about~~
12 ~~which the application is to be filed.~~

13 (4) ~~An application must also be accompanied by proof that public notice of the application was given~~
14 ~~to persons residing in the county in which any portion of the proposed facility is proposed or is alternatively~~
15 ~~proposed to be located, by publication of a summary of the application in those newspapers that will~~
16 ~~substantially inform those persons of the application."~~

17

18 **Section 133.** Section 75-20-245, MCA, is amended to read:

19 ~~"75-20-245.—Filing fee—accountability—refund—use.—(1) (a) A filing fee must be deposited in the~~
20 ~~state special revenue fund for the use of the department in administering Title 75, chapter 1, and this chapter.~~
21 ~~The applicant shall pay to the department a filing fee as provided in this section based upon the department's~~
22 ~~estimated costs of processing the application under this chapter. The fee may not exceed the following scale~~
23 ~~based upon the estimated cost of the facility:~~

24 (i) ~~6% of any estimated cost up to \$1 million; plus~~

25 (ii) ~~4% of any estimated cost over \$1 million and up to \$5 million; plus~~

26 (iii) ~~0.8% of any estimated cost over \$5 million and up to \$10 million; plus~~

27 (iv) ~~0.5% of any estimated cost over \$10 million and up to \$20 million; plus~~

28 (v) ~~0.25% of any estimated cost over \$20 million and up to \$100 million; plus~~

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- 1 (vi) ~~0.125% of any estimated cost over \$100 million and up to \$500 million; plus~~
2 (vii) ~~0.05% of any estimated cost over \$500 million and up to \$1 billion; plus~~
3 (viii) ~~0.025% of any estimated cost over \$1 billion.~~
4 (b) ~~The department may allow in its discretion a credit against the fee payable under this section for~~
5 ~~the development of information or providing of services required under this chapter or required for preparation~~
6 ~~of an environmental impact statement or assessment under the Montana or national environmental policy acts.~~
7 ~~The applicant may submit the information to the department, together with an accounting of the expenses~~
8 ~~incurred in preparing the information. The department shall evaluate the applicability, validity, and usefulness of~~
9 ~~the data and determine the amount that may be credited against the filing fee payable under this section. Upon~~
10 ~~30 days' notice to the applicant, this credit may at any time be reduced if the department determines that it is~~
11 ~~necessary to carry out its responsibilities under this chapter.~~
12 (2) ~~(a) The department may contract with an applicant for the development of information, provision~~
13 ~~of services, and payment of fees required under this chapter. The contract may continue an agreement entered~~
14 ~~into pursuant to 75-20-106. Payments made to the department under a contract must be credited against the~~
15 ~~fee payable pursuant to this section. Notwithstanding the provisions of this section, the revenue derived from~~
16 ~~the filing fee must be sufficient to enable the department, the board, and the agencies listed in 75-20-216(5) to~~
17 ~~carry out their responsibilities under this chapter. The department may amend a contract to require additional~~
18 ~~payments for necessary expenses up to the limits set forth in subsection (1)(a) upon 30 days' notice to the~~
19 ~~applicant. The department and applicant may enter into a contract that exceeds the scale provided in~~
20 ~~subsection (1)(a).~~
21 (b) ~~If a contract is not entered into, the applicant shall pay the filing fee in installments in accordance~~
22 ~~with a schedule of installments developed by the department, provided that an installment may not exceed 20%~~
23 ~~of the total filing fee provided for in subsection (1).~~
24 (3) ~~The estimated cost of upgrading an existing transmission substation may not be included in the~~
25 ~~estimated cost of a proposed facility for the purpose of calculating a filing fee.~~
26 (4) ~~If an application consists of a combination of two or more facilities, the filing fee must be based on~~
27 ~~the total estimated cost of the combined facilities.~~
28 (5) ~~The applicant is entitled to an accounting of money expended and to a refund with interest at the~~

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- 1 rate of 6% a year of that portion of the filing fee not expended by the department in carrying out its
2 responsibilities under this chapter. A refund must be made after all administrative and judicial remedies have
3 been exhausted by all parties to the certification proceedings.
4 (6) ~~The revenue derived from filing fees must be used by the department in compiling the information~~
5 ~~required for rendering a decision on a certificate and for carrying out its and the board's other responsibilities~~
6 ~~under this chapter."~~
7
8 **Section 134.** Section 75-20-216, MCA, is amended to read:
9 **"75-20-216. Study, evaluation, and report on proposed facility -- assistance by other agencies.**
10 (1) After receipt of an application, the department shall within 30 days notify the applicant in writing that:
11 (a) the application is in compliance and is accepted as complete; or
12 (b) the application is not in compliance and shall list the deficiencies. Upon correction of these
13 deficiencies and resubmission by the applicant, the department shall within 15 days notify the applicant in
14 writing that the application is in compliance and is accepted as complete.
15 (2) Upon receipt of an application complying with 75-20-211 through 75-20-213, 75-20-215, and this
16 section, the department shall:
17 (a) commence an evaluation of the proposed facility and its effects, considering all applicable criteria
18 listed in 75-20-301, and shall issue a decision, opinion, order, certification, or permit as provided in subsection
19 (3);
20 (b) use, to the extent that it considers applicable, valid and useful existing studies and reports
21 submitted by the applicant or compiled by a state or federal agency; and
22 (c) if a modification of a proposed facility is needed as determined by the department, consult with the
23 applicant. The proposed modification must be analyzed in the environmental review document prepared under
24 Title 75, chapter 1, parts 1 through 3.
25 (3) Except as provided in 75-1-205(4), 75-1-208(4)(b), and 75-20-231, the department shall issue,
26 within 9 months following the date of acceptance of an application, any decision, opinion, order, certification, or
27 permit required under the laws, other than those contained in this chapter, administered by the department. A
28 decision, opinion, order, certification, or permit, with or without conditions, must be made under those laws.

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1 Nevertheless, the department retains authority to make the determination required under 75-20-301(1)(c) or (3).
2 The decision, opinion, order, certification, or permit must be used in the final site selection process. Prior to the
3 issuance of a preliminary decision by the department and pursuant to rules adopted by the board department,
4 the department shall provide an opportunity for public review and comment.

5 (4) Except as provided in 75-1-205(4), 75-1-208(4)(b), and 75-20-231, within 9 months following
6 acceptance of an application for a facility, the department shall issue a report that must contain the
7 department's studies, evaluations, recommendations, customer fiscal impact analysis, if required pursuant to
8 69-2-216, and other pertinent documents resulting from its study and evaluation. An environmental impact
9 statement or analysis prepared pursuant to the Montana Environmental Policy Act may be included in the
10 department findings if compelling evidence indicates that adverse environmental impacts are likely to result due
11 to the construction and operation of a proposed facility. If the application is for a combination of two or more
12 facilities, the department shall issue its report within the greater of the lengths of time provided for in this
13 subsection for either of the facilities.

14 (5) For projects subject to joint review by the department and a federal land management agency, the
15 department's certification decision may be timed to correspond to the record of decision issued by the
16 participating federal agency.

17 (6) The departments of transportation; fish, wildlife, and parks; natural resources and conservation;
18 revenue; and public service regulation and the consumer counsel shall report to the department information
19 relating to the impact of the proposed facility on each department's area of expertise. The department shall
20 allocate funds obtained from filing fees to the departments making reports and to the office of consumer
21 counsel to reimburse them for the costs of compiling information and issuing the required report."

23 **Section 135.** Section 75-20-219, MCA, is amended to read:

24 "75-20-219.—Amendments to certificate.—(1) (a) Within 30 days after notice of an amendment to a
25 certificate is given as set forth in 75-20-213(1), including notice to all active parties to the original proceeding,
26 the department shall determine whether the proposed change in the facility would result in a material increase
27 in any environmental impact of the facility or a substantial change in the location of all or a portion of the facility
28 as set forth in the certificate.

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1 ~~(b)—If the department determines that the proposed change would result in a material increase in any~~
2 ~~environmental impact of the facility or a substantial change in the location of all or a portion of the facility, the~~
3 ~~department shall grant, deny, or modify the amendment with conditions as it considers appropriate.~~

4 ~~(c)—If the department determines that a modification of the proposed amendment to the certificate is~~
5 ~~needed, it shall consult with the applicant.~~

6 ~~(2)—In those cases in which the department determines that the proposed change in the facility would~~
7 ~~not result in a material increase in any environmental impact or would not be a substantial change in the~~
8 ~~location of all or a portion of the facility, the department shall automatically grant the amendment either as~~
9 ~~applied for or upon terms or conditions that the department considers appropriate.~~

10 ~~(3)—If a hearing is requested under 75-20-223(2), the party requesting the hearing has the burden of~~
11 ~~showing by clear and convincing evidence that the department's determination is not reasonable.~~

12 ~~(4)—If an amendment is required to a certificate that would affect, amend, alter, or modify a decision,~~
13 ~~opinion, order, certification, or air or water quality permit issued by the department or board, the amendment~~
14 ~~must be processed under the applicable statutes administered by the department or board."~~

15
16 **Section 136.** Section 75-20-223, MCA, is amended to read:

17 "**75-20-223.—Board review**~~Review of department decisions.~~—(1) (a) A person aggrieved by the final
18 decision of the department on an application for a certificate or the issuance of an air or water quality decision,
19 opinion, order, certification, or permit under this chapter may within 30 days appeal the decision to the board
20 ~~department.~~ Except as provided in this section, the contested case provisions of the Montana Administrative
21 Procedure Act, Title 2, chapter 4, part 6, apply to a hearing before the board ~~department.~~

22 (b) If the department provided an opportunity for public comment on the application, the request for a
23 hearing must be limited to those issues the party has raised in comments made to the department during the
24 comment period unless the issues are related to a material change in law made during the comment period, to
25 a judicial decision issued after the comment period, or to a material change to the draft permit, which was
26 submitted for public comment, made by the department in the final permit decision and upon which the public
27 did not have a meaningful opportunity to comment. The request for hearing must be filed within 30 days after
28 the department renders its decision. An affidavit setting forth the grounds for the request must be filed with the

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1 request for a hearing;

2 (c) If a hearing is requested by a person other than the applicant or permittee, the applicant or
3 permittee may, by filing a written election with the board ~~department~~ within 15 days of receipt of the request for
4 hearing, elect to have the matter proceed to hearing before the board or to have the matter submitted directly to
5 the district court for judicial review of the agency decision. The party who requests the hearing may elect to
6 have the matter submitted either to the board ~~department~~ for a hearing or to the district court for judicial review
7 by submitting a written election to the board ~~department~~ with the request for hearing. If there are conflicting
8 elections between the parties, the matter must proceed to district court. If the applicant or permittee is not the
9 person who requested the hearing and has elected to have the matter submitted to the district court, the person
10 who submitted the request for a hearing shall file a petition for review of the permit decision within 15 days of
11 receipt of notice from the permittee. If the person who requested the hearing has elected to have the matter
12 proceed to district court, that person shall file a petition in district court within 15 days of filing the request. The
13 petition must be limited to matters raised in the request for hearing and must be filed in the county in which the
14 facility is located. If the applicant or permittee fails to make an election, the matter must proceed through the
15 contested case process before the board ~~department~~ pursuant to the Montana Administrative Procedure Act.
16 The board ~~department~~ or the district court shall apply the laws and rules in place when the department issued
17 its decision, and the board ~~department~~ or the district court may not consider any issue from a party that was not
18 presented to the department for the department's consideration during the formal comment period unless the
19 issue is related to a material change in law made during the comment period, to a judicial decision issued after
20 the comment period, or to a material change to the draft permit, which was submitted for public comment, made
21 by the department in the final permit decision and upon which the public did not have a meaningful opportunity
22 to comment.

23 (2) A person aggrieved by the final decision of the department on an application for amendment of a
24 certificate may within 15 days appeal the decision to the board ~~department~~ as provided in subsections (1)(b)
25 and (1)(c).

26 (3) A person aggrieved by the department's decision not to include an environmental impact
27 statement or analysis in the department's findings pursuant to 75-20-216 may within 30 days appeal the
28 decision as provided in subsections (1)(b) and (1)(c).

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1 (4) The board ~~department~~ shall issue a final decision within 4 months from the close of the hearing on
2 the merits or, if no hearing is held, within 3 months from the date that briefing by the parties is complete unless
3 the applicant and the party other than the applicant agree in writing to an extension of time.

4 (5) A customer fiscal impact analysis required by 69-2-216 may not be used as the basis of an appeal
5 of a final decision by the department.²
6

7 **Section 137.** Section 75-20-301, MCA, is amended to read:

8 ~~"75-20-301. Decision of department -- findings necessary for certification. (1) Within 30 days~~
9 ~~after issuance of the report pursuant to 75-20-216 for facilities defined in 75-20-104(9)(a) and (9)(b) 75-20-~~
10 ~~104(8)(a) and (8)(b), the department shall approve a facility as proposed or as modified or an alternative to a~~
11 ~~proposed facility if the department finds and determines:~~

12 (a) the basis of the need for the facility;

13 (b) the nature of the probable environmental impact;

14 (c) that the facility minimizes adverse environmental impact, considering the state of available
15 technology and the nature and economics of the various alternatives;

16 (d) in the case of an electric, gas, or liquid transmission line or aqueduct:

17 (i) what part, if any, of the line or aqueduct will be located underground;

18 (ii) that the facility is consistent with regional plans for expansion of the appropriate grid of the utility
19 systems serving the state and interconnected utility systems; and

20 (iii) that the facility will serve the interests of utility system economy and reliability;

21 (e) that the location of the facility as proposed conforms to applicable state and local laws and
22 regulations, except that the department may refuse to apply any local law or regulation if it finds that, as applied
23 to the proposed facility, the law or regulation is unreasonably restrictive in view of the existing technology, of
24 factors of cost or economics, or of the needs of consumers, whether located inside or outside the directly
25 affected government subdivisions;

26 (f) that the facility will serve the public interest, convenience, and necessity;

27 (g) that the department or board has issued any necessary air or water quality decision, opinion,
28 order, certification, or permit as required by 75-20-216(3); and

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1 ~~(h)—that the use of public lands or federally designated energy corridors for location of a facility defined~~
2 ~~in 75-20-104(9)(a) or (9)(b) 75-20-104(8)(a) and (8)(b) was evaluated and public lands or federally designated~~
3 ~~energy corridors for that facility were selected whenever their use was compatible with;~~
4 ~~(i)—the requirements of subsections (1)(a) through (1)(g); and~~
5 ~~(ii)—transmission line reliability criteria established by transmission reliability agencies for a facility~~
6 ~~defined in 75-20-104(9)(a), 75-20-104(8)(a);~~
7 ~~(2)—In determining that the facility will serve the public interest, convenience, and necessity under~~
8 ~~subsection (1)(f), the department shall consider:~~
9 ~~(a)—the items listed in subsections (1)(a) and (1)(b);~~
10 ~~(b)—the benefits to the applicant and the state resulting from the proposed facility;~~
11 ~~(c)—the effects of the economic activity resulting from the proposed facility;~~
12 ~~(d)—the effects of the proposed facility on the public health, welfare, and safety;~~
13 ~~(e)—any other factors that it considers relevant.~~
14 ~~(3)—Within 30 days after issuance of the report pursuant to 75-20-216 for a facility defined in 75-20-~~
15 ~~104(9)(c) 75-20-104(8)(c), the department shall approve a facility as proposed or as modified or an alternative~~
16 ~~to a proposed facility if the department finds and determines:~~
17 ~~(a)—that the facility or alternative incorporates all reasonable, cost-effective mitigation of significant~~
18 ~~environmental impacts; and~~
19 ~~(b)—that unmitigated impacts, including those that cannot be reasonably quantified or valued in~~
20 ~~monetary terms, will not result in:~~
21 ~~(i)—a violation of a law or standard that protects the environment; or~~
22 ~~(ii)—a violation of a law or standard that protects the public health and safety.~~
23 ~~(4)—For facilities defined in 75-20-104, if the department cannot make the findings required in this~~
24 ~~section, it shall deny the certificate."~~

25
26 **Section 138.** Section 75-20-303, MCA, is amended to read:

27 **"75-20-303.—Opinion issued with decision—contents.** (1) In rendering a decision on an application
28 for a certificate, the department shall issue an opinion stating its reasons for the action taken;

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1 ~~(2)—If the department has found that any regional or local law or regulation that would be otherwise~~
2 ~~applicable is unreasonably restrictive, it shall state in its opinion the reasons that it is unreasonably restrictive.~~
3 ~~(3)—A certificate issued by the department must include the following:~~
4 ~~(a)—an environmental evaluation statement related to the facility being certified. The statement must~~
5 ~~include but is not limited to analysis of the following information:~~
6 ~~(i)—the environmental impact of the proposed facility; and~~
7 ~~(ii)—any adverse environmental effects that cannot be avoided by issuance of the certificate;~~
8 ~~(b)—a plan for monitoring environmental effects of the proposed facility;~~
9 ~~(c)—a plan for monitoring the certified facility site between the time of certification and completion of~~
10 ~~construction;~~
11 ~~(d)—a time limit as provided in subsection (4);~~
12 ~~(e)—a statement confirming that notice was provided pursuant to subsection (5); and~~
13 ~~(f)—a statement signed by the applicant showing agreement to comply with the requirements of this~~
14 ~~chapter and the conditions of the certificate.~~
15 ~~(4)—(a) The department shall issue as part of the certificate the following time limits:~~
16 ~~(i)—For a facility as defined in 75-20-104(9)(a) 75-20-104(8)(a) that is more than 30 miles in length and~~
17 ~~for a facility defined in 75-20-104(9)(b), 75-20-104(8)(b), construction must be completed within 10 years.~~
18 ~~(ii)—For a facility as defined in 75-20-104(9)(a) 75-20-104(8)(a) that is 30 miles or less in length,~~
19 ~~construction must be completed within 5 years.~~
20 ~~(iii)—For a facility as defined in 75-20-104(9)(c), 75-20-104(8)(c), construction must begin within 6 years~~
21 ~~and continue with due diligence in accordance with preliminary construction plans established in the certificate.~~
22 ~~(b) Unless extended, a certificate lapses and is void if the facility is not constructed or if construction~~
23 ~~of the facility is not commenced within the time limits provided in this section.~~
24 ~~(c) The time limit may be extended for a reasonable period upon a showing by the applicant to the~~
25 ~~department that a good faith effort is being undertaken to complete construction under subsections (4)(a)(i) and~~
26 ~~(4)(a)(ii). Under this subsection, a good faith effort includes the process of acquiring any necessary state or~~
27 ~~federal permit or certificate for the facility and the process of judicial review of a permit or certificate.~~
28 ~~(d) Construction may begin immediately upon issuance of a certificate unless the department finds~~

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1 that there is substantial and convincing evidence that a delay in the commencement of construction is
2 necessary and should be established for a particular facility.
3 (5) — (a) — (i) — Except as provided in subsection (5)(a)(ii), for a facility defined in 75-20-104(9)(a) and
4 (9)(b) ~~75-20-104(8)(a) and (8)(b)~~, the environmental review conducted pursuant to Title 75, chapter 1, parts 1
5 through 3, prepared by the department must designate a 500-foot-wide facility-siting corridor along the facility
6 route.
7 (ii) — Prior to preparation of the environmental review or the draft environmental impact statement, the
8 department shall consult the applicant and, in a manner determined by rule, landowners and identify areas in
9 which a corridor considered in the environmental review document should be more or less than 500 feet wide.
10 The corridor width may not be narrower than the applicant's right-of-way. For each area in which the corridor is
11 more or less than 500 feet in width, the department shall provide a written justification. The department may not
12 modify a corridor after issuance of the final environmental review document.
13 (b) — The department shall provide written notice of the availability of each environmental review
14 document to each owner of property within a corridor. No more than 60 days prior to the availability of each
15 environmental review document, the names and addresses of the property owners must be obtained from the
16 property tax rolls of the county where the property is located. Except as provided in subsection (5)(c), the notice
17 must:
18 (i) — be delivered personally or by first-class mail. If delivered personally, the property owner shall sign a
19 receipt verifying that the property owner received the statement.
20 (ii) — inform the property owner that the property owner's property is located within a corridor;
21 (iii) — inform the property owner about how a copy of the environmental review document may be
22 obtained; and
23 (iv) — inform the property owner of the property owner's rights under this chapter concerning the location
24 of the facility and that more information concerning those rights may be obtained from the department.
25 (c) — If there is more than one name listed on the property tax rolls for a single property, the notice must
26 be mailed to the first-listed property owner at the address on the property tax rolls.
27 (d) — By mailing the notice as provided in subsection (5)(c), the notice requirements in subsection (5)(b)
28 are satisfied.

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1 (6) — (a) — A certificate holder may submit an adjustment of the location of a facility outside the approved
2 facility-siting corridor to the department. The adjustment must be accompanied by the written agreement of the
3 affected property owner and all contiguous property owners that would be affected. The submission must
4 include a map showing the approved facility-siting corridor and the proposed adjustment. At the time of
5 submission to the department, the adjustment must be accompanied by a copy of a legal notice published in a
6 newspaper of general circulation in the area of the adjustment. The legal notice must specify that public
7 comments on the adjustment may be submitted to the department within 10 days of the publication date of the
8 notice.
9 (b) — The certificate holder may construct the facility as described in the submission unless the
10 department notifies the certificate holder within 15 days of the submission that the department has determined
11 that:
12 (i) — the adjustment would change the basis of any finding required under 75-20-304 to the extent that
13 the department would have selected a different siting corridor for the facility; or
14 (ii) — the adjustment would materially increase unmitigated adverse impacts.
15 (c) — An adjustment pursuant to subsection (6)(a) is not subject to:
16 (i) — Title 75, chapter 1, part 2;
17 (ii) — a certificate amendment under 75-20-219; or
18 (iii) — a board review under 75-20-223.
19 (d) — (i) — For each facility, the department shall maintain a list of persons who requested to receive
20 electronic notice of any adjustment submitted pursuant to this subsection (6).
21 (ii) — Upon receipt of a submitted adjustment, the department shall:
22 (A) — post information about the adjustment on the department's website; and
23 (B) — electronically notify each person identified in subsection (6)(d)(i) of the adjustment and where
24 information about the adjustment may be viewed."

26 **Section 139.** Section 75-20-304, MCA, is amended to read:

27 "75-20-304. — **Waiver of provisions of certification proceedings.** — (1) The department may waive
28 compliance with any of the provisions of 75-20-216 and this part if the applicant makes a clear and convincing

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1 showing to the department at a public hearing that an immediate, urgent need for a facility exists and that the
2 applicant did not have knowledge that the need for the facility existed sufficiently in advance to fully comply with
3 the provisions of 75-20-216 and this part.

4 (2) — The department may waive compliance with any of the provisions of this chapter upon receipt of
5 notice by a person subject to this chapter that a facility or associated facility has been damaged or destroyed as
6 a result of fire, flood, or other natural disaster or as the result of insurrection, war, or other civil disorder and
7 there exists an immediate need for construction of a new facility or associated facility or the relocation of a
8 previously existing facility or associated facility in order to promote the public welfare.

9 (3) — The department shall waive compliance with the requirements of 75-20-301(1)(c), (2)(b), and
10 (2)(c) and the requirements of 75-20-211(1)(a)(iii) and (1)(a)(iv) and 75-20-216(3) relating to consideration of
11 alternative sites if the applicant makes a clear and convincing showing to the department at a public hearing
12 that:

13 (a) — a proposed facility will be constructed in a county where a single employer within the county has
14 permanently curtailed or ceased operations, causing a loss of 250 or more permanent jobs within 2 years at the
15 employer's operations within the preceding 10-year period;

16 (b) — the county and municipal governing bodies in whose jurisdiction the facility is proposed to be
17 located support by resolution the waiver;

18 (c) — the proposed facility will be constructed within a 15-mile radius of the operations that have ceased
19 or been curtailed; and

20 (d) — the proposed facility will have a beneficial effect on the economy of the county in which the facility
21 is proposed to be located.

22 (4) — The waiver provided for in subsection (3) applies only to permanent job losses by a single
23 employer. The waiver provided for in subsection (3) does not apply to jobs of a temporary or seasonal nature,
24 including but not limited to construction jobs or job losses during labor disputes.

25 (5) — The waiver provided for in subsection (3) does not apply to consideration of alternatives or
26 minimum adverse environmental impact for a facility defined in 75-20-104(9)(a) or (9)(b) 75-20-104(8)(a) or
27 (8)(b) or for an associated facility defined in 75-20-104(3).

28 (6) — The applicant shall pay all expenses required to process and conduct a hearing on a waiver

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1 request under subsection (3). However, any payments made under this subsection must be credited toward the
2 fee paid under 75-20-215 to the extent that the data or evidence presented at the hearing or the decision of the
3 department under subsection (3) can be used in making a certification decision under this chapter.

4 (7) — The department may grant only one waiver under subsections (3) and (4) for each permanent loss
5 of jobs as defined in subsection (3)(a)."

7 **Section 140.** Section 75-20-401, MCA, is amended to read:

8 "75-20-401. — **Additional requirements by other governmental agencies not permitted after**
9 **issuance of certificate — exceptions — venue for challenging certificate issuance.** (1) Notwithstanding any
10 other law, a state or regional agency or municipality or other local government may not require any approval,
11 consent, permit, certificate, or other condition for the construction, operation, or maintenance of a facility
12 authorized by a certificate issued pursuant to this chapter, except that the department and board retain retains
13 the authority that they have or may be granted to determine compliance of the proposed facility with state and
14 federal standards and implementation plans for air and water quality and to enforce those standards.

15 (2) — This chapter does not prevent the application of state laws for the protection of employees
16 engaged in the construction, operation, or maintenance of a facility.

17 (3) — A judicial challenge to a certificate issued pursuant to this chapter by a party other than the
18 certificate holder or applicant must include the party to whom the certificate was issued as provided in this
19 chapter unless otherwise agreed to by the certificate holder or applicant. All judicial challenges of certificates for
20 projects with a project cost, as determined by the court, of more than \$1 million must have precedence over any
21 civil cause of a different nature pending in that court. If the court determines that the challenge was without
22 merit or was for an improper purpose, such as to harass, to cause unnecessary delay, or to impose needless or
23 increased cost in litigation, the court may award attorney fees and costs incurred in defending the action.

24 (4) — An action to challenge the issuance of a certificate pursuant to this chapter must be brought in the
25 county in which the activity authorized by the certificate will occur. If an activity will occur in more than one
26 county, the action may be brought in any of the counties in which the activity will occur."

28 **Section 141.** Section 75-20-406, MCA, is amended to read:

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1 **"75-20-406. Judicial review of board-department decisions.** (1) A person aggrieved by the final
2 decision of the board-department or board on an application for a certificate may obtain judicial review of that
3 decision by the filing of a petition in a state district court of competent jurisdiction. A challenge to the issuance
4 of a certificate must be brought in the county in which the activity authorized by the certificate will occur. If an
5 activity will occur in more than one county, the action may be brought in any of the counties in which the activity
6 will occur.

7 (2) The judicial review procedure is the procedure for contested cases under the Montana
8 Administrative Procedure Act.

9 (3) A judicial challenge to a certificate issued pursuant to this chapter by a party other than the
10 certificate holder or applicant must include the party to whom the certificate was issued as provided in this
11 chapter unless otherwise agreed to by the certificate holder or applicant. All judicial challenges of certificates for
12 projects with a project cost, as determined by the court, of more than \$1 million must have precedence over any
13 civil cause of a different nature pending in that court. If the court determines that the challenge was without
14 merit or was for an improper purpose, such as to harass, to cause unnecessary delay, or to impose needless or
15 increased cost in litigation, the court may award attorney fees and costs incurred in defending the action."

16
17 **Section 142.** Section 75-20-407, MCA, is amended to read:

18 **"75-20-407. Jurisdiction of courts restricted.** Except as expressly set forth in 75-20-401, 75-20-
19 406, and 75-20-408, no court of this state has jurisdiction to hear or determine any issue, case, or controversy
20 concerning any matter which was or could have been determined in a proceeding before the board-board or
21 department under this chapter or to stop or delay the construction, operation, or maintenance of a facility,
22 except to enforce compliance with this chapter or the provisions of a certificate issued hereunder-pursuant to
23 75-20-404 and 75-20-405 or 75-20-408."

24
25 **Section 143.** Section 75-20-410, MCA, is amended to read:

26 **"75-20-410. Order not stayed by appeal—stay or suspension by court—limitations.**
27 Notwithstanding any contrary provision in the law, the pendency of an appeal from a board-department order
28 does not automatically stay or suspend the operation of the order. During the pendency of the appeal, the court

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1 may upon motion by one of the parties stay or suspend, in whole or in part, the operation of the board's
2 department's orders on terms the court considers just. The court's action must be in accordance with the
3 practice of courts exercising equity jurisdiction, subject to the following limitations:

4 (1)—No stay may be granted without notice to the parties and an opportunity to be heard by the court.
5 (2)—No board-department order may be stayed or suspended without finding that irreparable damage
6 would otherwise result to the party seeking the stay or suspension, and any other stay or suspension of a board
7 department order must specify the nature of the damage."

8
9 **Section 144.** Section 75-20-411, MCA, is amended to read:

10 **"75-20-411. Surety bond—other security.** If an order of the board-department is stayed or
11 suspended, the court may require a bond with good and sufficient surety conditioned that the party petitioning
12 for review answer for all damages caused by the delay in enforcing the order of the board except that the cost
13 of the bond is not chargeable to the applicant as part of the fee. If the party petitioning for review prevails upon
14 final resolution of an appeal, the party does not forfeit bond nor is the party responsible for damages caused by
15 delay."

16
17 **Section 145.** Section 75-20-1001, MCA, is amended to read:

18 **"75-20-1001. Geothermal exploration -- notification of department.** The board-department shall
19 adopt rules requiring every person who proposes to gather geological data by boring of test holes or other
20 underground exploration, investigation, or experimentation related to the possible future development of a
21 facility employing geothermal resources to comply with the following requirements:

22 (1) notify the department of the proposed action;
23 (2) submit to the department a description of the area involved;
24 (3) submit to the department a statement of the proposed activities to be conducted and the methods
25 to be utilized;
26 (4) submit to the department geological data reports at such times as may be required by the rules;
27 and
28 (5) submit such other information as the board-department may require in the rules."

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1
2 **Section 146.** ~~Section 75-20-1202, MCA, is amended to read:~~
3 ~~"75-20-1202.—Definitions.—As used in 75-20-201, 75-20-203, and this part, the following definitions~~
4 ~~apply:~~
5 ~~(1)—"Facility", as defined in 75-20-104(9), 75-20-104(8), is further defined to include any nuclear facility~~
6 ~~as defined in subsection (2)(a).~~
7 ~~(2)—(a)—"Nuclear facility" means each plant, unit, or other facility designed for or capable of:~~
8 ~~(i)—generating 50 megawatts of electricity or more by means of nuclear fission;~~
9 ~~(ii)—converting, enriching, fabricating, or reprocessing uranium minerals or nuclear fuels; or~~
10 ~~(iii)—storing or disposing of radioactive wastes or materials from a nuclear facility.~~
11 ~~(b)—Nuclear facility does not include any small-scale facility used solely for educational, research, or~~
12 ~~medical purposes not connected with the commercial generation of energy."~~
13
14 **Section 147.** Section 75-20-1203, MCA, is amended to read:
15 **"75-20-1203. Additional requirements for issuance of a certificate for the siting of a nuclear**
16 **facility.** (1) The board department may not issue a certificate to construct a nuclear facility unless it finds that:
17 (a) no legal limits exist regarding the rights of a person or group of persons to bring suit for and
18 recover full and just compensation from the designers, manufacturers, distributors, owners, and/or operators
19 of a nuclear facility for damages resulting from the existence or operation of the facility; and further, that no
20 legal limits exist regarding the total compensation which that may be required from the designers,
21 manufacturers, distributors, owners, and/or operators of a nuclear facility for damages resulting from the
22 existence or operation of such the facility;
23 (b) the effectiveness of all safety systems, including but not limited to the emergency core cooling
24 systems, of such the nuclear facility has been demonstrated, to the satisfaction of the board department, by the
25 comprehensive laboratory testing of substantially similar physical systems in actual operation;
26 (c) the radioactive materials from such the nuclear facilities can be contained with no reasonable
27 chance, as determined by the board department, of intentional or unintentional escape or diversion of such
28 radioactive materials into the natural environment in such a manner as to cause that causes substantial or long-

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1 term harm or hazard to present or future generations due to imperfect storage technologies, earthquakes or
2 other acts of God, theft, sabotage, acts of war or other social instabilities, or whatever other causes the board
3 department may ~~deem to be consider~~ reasonably possible, at any time during which such the materials remain
4 a radiological hazard; and
5 (d) the owner of such the nuclear facility has posted with the board department a bond totaling not
6 less than 30% of the total capital cost of the facility, as estimated by the board department, to pay for the
7 decommissioning of the facility and the decontamination of any area contaminated with radioactive materials
8 due to the existence or operation of the facility in the event the owner fails to pay the full costs of such the
9 decommissioning and decontamination. Excess bond, if any, shall must be refunded to the owner upon
10 demonstration, to the satisfaction of the board department, that the site and environs of the facility pose no
11 radiological danger to present or future generations and that whatever other conditions the board department
12 may ~~deem consider~~ reasonable have been are met.
13 (2) Nothing in this section shall may be construed as relieving the owner of a nuclear facility from full
14 financial responsibility for the decommissioning of such the facility and decontamination of any area
15 contaminated with radioactive materials as a result of the existence or operation of such the facility at any time
16 during which such materials remain a radiological hazard."
17
18 **Section 148.** Section 75-20-1205, MCA, is amended to read:
19 **"75-20-1205. Emergency approval authority invalid for nuclear facilities.** Notwithstanding the
20 provisions of 75-20-304(2) and (3), the board department may not waive compliance with any of the provisions
21 of 75-20-201 and 75-20-203 or this part relating to certification of a nuclear facility."
22

23 **Section 149.** ~~Section 75-26-301, MCA, is amended to read:~~
24 ~~"75-26-301.—Definitions.—As used in this part, unless the context requires otherwise, the following~~
25 ~~definitions apply:~~
26 ~~(1)—"Board" means the board of environmental review provided for in 2-15-3502.~~
27 ~~(2)(1)—"Decommission" or "decommissioning" means:~~
28 ~~(a)—except as provided in 75-26-304(2), the removal of buildings, cabling, electrical components;~~

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1 roads, or any other facilities associated with a wind generation or solar facility;
2 (b)—except as provided in 75-26-304(2), reclamation of surface lands to the previous grade and to
3 comparable productivity in order to prevent adverse hydrologic effects; and
4 (c)—(i) the removal of the solar facility after the end of the facility's useful life or abandonment; or
5 (ii) the removal of an aboveground wind turbine tower after the end of a wind generation facility's useful
6 life or abandonment.
7 (3)(2) "Department" means the department of environmental quality provided for in 2-15-3501.
8 (4)(3) "Owner" means a person who owns a wind generation or solar facility used for the generation of
9 electricity.
10 (5)(4) "Person" means any individual, firm, partnership, company, association, corporation, city, town,
11 or local governmental entity or any other state, federal, or private entity, whether organized for profit or not.
12 (6)(5) "Repurposed" means having made a significant investment in an existing wind generation or
13 solar facility to extend the useful life of the facility by more than 5 years.
14 (7)(6) "Solar facility" means an installation or combination of solar panels or plates, including a canopy
15 or array, that captures and converts solar radiation to produce electricity and includes flat plate, focusing solar
16 collectors, or photovoltaic solar cells that:
17 (a)—has a nameplate capacity greater than or equal to 2 megawatts; and
18 (b)—produces electricity that is not consumed on the premises of the solar facility or on land
19 immediately adjacent to the premises of the solar facility.
20 (8)(7) "Wind generation facility" means any combination of a physically connected wind turbine or
21 turbines, associated prime movers, and other associated property, including appurtenant land and
22 improvements and personal property, that are normally operated together to produce electric power from wind
23 and that have a nameplate capacity greater than or equal to 25 megawatts."
24
25 **Section 150.** Section 75-26-304, MCA, is amended to read:
26 "75-26-304. **Bond—penalty for failure to submit.** (1) (a) Within 12 months of a wind generation
27 facility or solar facility commencing commercial operation, the owner of a wind generation facility or solar facility
28 operating in Montana shall:

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1 (i)—notify the department in writing of the date that the facility began commercial operation;
2 (ii)—subject to subsection (2), submit a plan for decommissioning the facility to the department,
3 including the scope of work to be completed and cost estimates for completion; and
4 (iii)—provide the department with any other necessary information in accordance with this part and rules
5 adopted pursuant to this part in order for the department to determine bond requirements in accordance with
6 this section.
7 (b)—Except as provided in subsection (1)(c), if a wind generation facility or solar facility commenced
8 commercial operation before May 7, 2019, the owner of the facility shall submit to the department the
9 information required in subsection (1)(a) on or before July 1, 2020.
10 (c)—If a wind generation facility commenced commercial operation before May 7, 2019, and the owner
11 of the facility submitted information required by subsection (1)(a) on or before July 1, 2018, the owner is not
12 required to resubmit the information.
13 (2)—If a property owner and the owner of a wind generation facility or solar facility reach an agreement
14 concerning alternative restoration of buildings, cabling, electrical components, roads, or any other associated
15 facilities, instead of removal, or alternative plans for reclamation of surface lands, or both, decommissioning
16 does not include removal, plans for reclamation, or both, as long as a copy of the agreement is provided to the
17 department.
18 (3)—(a) If necessary, the department may modify a plan for decommissioning to determine bond
19 requirements in accordance with subsections (4) through (8).
20 (b)—The department shall notify the owner of the facility of any modification. The owner of the wind
21 generation facility or solar facility may appeal a modification by the department of a plan for decommissioning to
22 the board department within 60 days of receiving notice of the modification to the plan.
23 (4)—In determining the amount of a bond required in accordance with subsection (6), the department
24 shall consider:
25 (a)—the character and nature of the site where the wind generation facility or solar facility is located;
26 and
27 (b)—the current market salvage value of the wind generation facility or solar facility, as determined by
28 an independent evaluator.

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1 ~~(5)—Except as provided in subsections (7) and (8) and in accordance with subsection (6), the owner of~~
2 ~~a wind-generation facility or solar facility shall submit to the department a bond payable to the state of Montana~~
3 ~~in a form acceptable by the department and in the sum determined by the department, conditioned on the~~
4 ~~faithful decommissioning of the wind-generation facility or solar facility.~~
5 ~~(6)—(a)—Except as provided in subsections (7) and (8), if a wind-generation facility or solar facility~~
6 ~~commenced commercial operation on or before January 1, 2007, the operator shall submit the~~
7 ~~decommissioning bond to the department prior to the conclusion of the 16th year of operation of the wind~~
8 ~~generation facility or solar facility.~~
9 ~~(b)—Except as provided in subsections (7) and (8), if a wind-generation facility or solar facility~~
10 ~~commenced commercial operation after January 1, 2007, the operator shall submit the decommissioning bond~~
11 ~~to the department prior to the conclusion of the 15th year of operation of the wind-generation facility or solar~~
12 ~~facility.~~
13 ~~(7)—If a wind-generation facility or solar facility is repurposed, as determined by the department in~~
14 ~~consultation with the owner, the owner is not required to provide a bond, and any existing bond must be~~
15 ~~released until the repurposed facility reaches its 5th year of operation.~~
16 ~~(8)—An owner of a wind-generation facility or solar facility is exempt from the requirements of~~
17 ~~subsection (6) if:~~
18 ~~(a)—the owner posts a bond with a federal agency, with the department of natural resources and~~
19 ~~conservation for the lease of state land, or with a tribal, county, or local government;~~
20 ~~(b)—the owner furnishes documents to the department that prove the owner is responsible under the~~
21 ~~terms and conditions of a lease agreement to provide private bonding. The parties shall agree that release of~~
22 ~~the agreed-upon bond is subject to the approval of the department upon completion of reclamation.~~
23 ~~(c)—the private landowner on whose land the wind-generation facility or solar facility is located owns a~~
24 ~~10% or greater share of the wind-generation facility or solar facility, as determined by the department; or~~
25 ~~(d)—the facility;~~
26 ~~(i)—commenced commercial operation on or before January 1, 2018, is a wind-generation facility, and~~
27 ~~has less than 25 megawatts in nameplate capacity; or~~
28 ~~(ii)—commenced commercial operation on or before January 1, 2020, is a solar facility, and has less~~

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1 ~~than 2 megawatts in nameplate capacity.~~
2 ~~(9)—(a)—If the owner of the wind-generation facility or solar facility fails to submit a decommissioning~~
3 ~~bond acceptable to the department within the timeframe required by this section, the department shall provide~~
4 ~~notice to the facility owner. If after 30 days the owner of a wind-generation facility or solar facility has not~~
5 ~~submitted a decommissioning bond, the department may assess an administrative penalty of not more than~~
6 ~~\$1,500 and an additional administrative penalty of not more than \$1,500 for each day the failure to submit the~~
7 ~~decommissioning bond continues.~~
8 ~~(b)—The owner of the wind-generation facility or solar facility may appeal the department's penalty~~
9 ~~assessment to the board within 20 days after receipt of written notice of the penalty. The contested case~~
10 ~~provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing before the~~
11 ~~board department under this subsection (9).~~
12 ~~(10)—If the owner of a wind-generation facility or solar facility transfers ownership of the facility to a~~
13 ~~successor owner, the first owner's bond must be released after 90 days. The new owner shall submit any~~
14 ~~necessary bond within 90 days after transfer of ownership or be subject to penalties in accordance with this~~
15 ~~section.~~
16 ~~(11)—Once every 5 years, the owner of a wind-generation facility or solar facility may submit an~~
17 ~~amended plan for the department's approval. As part of the submission, the owner of a wind-generation facility~~
18 ~~or solar facility may also apply to the department for a reduction in the amount of the decommissioning bond~~
19 ~~applicable to the wind-energy facility or solar facility. The owner's application to the department must include a~~
20 ~~detailed description of any material changes to information considered by the department in setting the initial~~
21 ~~amount of the bond.~~
22 ~~(12)—Submitting a bond in accordance with this section does not absolve the owner of a wind~~
23 ~~generation facility or solar facility from complying with applicable regulations and requirements for:~~
24 ~~(a)—areas subject to local zoning adopted under Title 76, chapter 2;~~
25 ~~(b)—military-affected areas under Title 10, chapter 1, part 15; or~~
26 ~~(c)—airport-affected areas under Title 67, chapter 7."~~
27
28 **Section 151.** Section 76-3-622, MCA, is amended to read:

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1 ***76-3-622. Water and sanitation information to accompany preliminary plat.** (1) Except as
2 provided in subsection (2), the subdivider shall submit to the governing body or to the agent or agency
3 designated by the governing body the information listed in this section for proposed subdivisions that will
4 include new water supply or wastewater facilities. The information must include:
5 (a) a vicinity map or plan that shows:
6 (i) the location, within 100 feet outside of the exterior property line of the subdivision and on the
7 proposed lots, of:
8 (A) flood plains;
9 (B) surface water features;
10 (C) springs;
11 (D) irrigation ditches;
12 (E) existing, previously approved, and, for parcels less than 20 acres, proposed water wells and
13 wastewater treatment systems;
14 (F) for parcels less than 20 acres, mixing zones identified as provided in subsection (1)(g); and
15 (G) the representative drainfield site used for the soil profile description as required under subsection
16 (1)(d); and
17 (ii) the location, within 500 feet outside of the exterior property line of the subdivision, of public water
18 and sewer facilities;
19 (b) a description of the proposed subdivision's water supply systems, storm water systems, solid
20 waste disposal systems, and wastewater treatment systems, including:
21 (i) whether the water supply and wastewater treatment systems are individual, shared, multiple user,
22 or public as those systems are defined in rules published by the department of environmental quality; and
23 (ii) if the water supply and wastewater treatment systems are shared, multiple user, or public, a
24 statement of whether the systems will be public utilities as defined in 69-3-101 and subject to the jurisdiction of
25 the public service commission or exempt from public service commission jurisdiction and, if exempt, an
26 explanation for the exemption;
27 (c) a drawing of the conceptual lot layout at a scale no smaller than 1 inch equal to 200 feet that
28 shows all information required for a lot layout document in rules adopted by the department of environmental

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1 quality pursuant to 76-4-104;
2 (d) evidence of suitability for new onsite wastewater treatment systems that, at a minimum, includes:
3 (i) a soil profile description from a representative drainfield site identified on the vicinity map, as
4 provided in subsection (1)(a)(i)(G), that complies with standards published by the department of environmental
5 quality;
6 (ii) demonstration that the soil profile contains a minimum of 4 feet of vertical separation distance
7 between the bottom of the permeable surface of the proposed wastewater treatment system and a limiting
8 layer; and
9 (iii) in cases in which the soil profile or other information indicates that ground water is within 7 feet of
10 the natural ground surface, evidence that the ground water will not exceed the minimum vertical separation
11 distance provided in subsection (1)(d)(ii);
12 (e) for new water supply systems, unless cisterns are proposed, evidence of adequate water
13 availability:
14 (i) obtained from well logs or testing of onsite or nearby wells;
15 (ii) obtained from information contained in published hydrogeological reports; or
16 (iii) as otherwise specified by rules adopted by the department of environmental quality pursuant to 76-
17 4-104;
18 (f) evidence of sufficient water quality in accordance with rules adopted by the department of
19 environmental quality pursuant to 76-4-104;
20 (g) a preliminary analysis of potential impacts to ground water quality from new wastewater treatment
21 systems, using as guidance rules adopted by the board of environmental review pursuant to 75-5-301 and 75-
22 5-303 related to standard mixing zones for ground water, source specific mixing zones, and nonsignificant
23 changes in water quality. The preliminary analysis may be based on currently available information and must
24 consider the effects of overlapping mixing zones from proposed and existing wastewater treatment systems
25 within and directly adjacent to the subdivision. Instead of performing the preliminary analysis required under this
26 subsection (1)(g), the subdivider may perform a complete nondegradation analysis in the same manner as is
27 required for an application that is reviewed under Title 76, chapter 4.
28 (2) A subdivider whose land division is excluded from review under 76-4-125(1) is not required to

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1 submit the information required in this section.

2 (3) A governing body may not, through adoption of regulations, require water and sanitation
3 information in addition to the information required under this section unless the governing body complies with
4 the procedures provided in 76-3-511."

5
6 **Section 152.** Section 76-4-102, MCA, is amended to read:

7 "76-4-102.—Definitions. As used in this part, unless the context clearly indicates otherwise, the
8 following definitions apply:

9 (1) "Adequate county water and/or sewer district facilities" means facilities provided by a county water
10 and/or sewer district incorporated under Title 7, chapter 13, that operate in compliance with Title 75, chapters 5
11 and 6.

12 (2) "Adequate municipal facilities" means municipally, publicly, or privately owned facilities that supply
13 water, treat sewage, or dispose of solid waste for all or most properties within the boundaries of a municipality
14 and that are operating in compliance with Title 75, chapters 5 and 6.

15 (3) "Board" means the board of environmental review.

16 (4)(3) "Certifying authority" means a municipality or a county water and/or sewer district that meets
17 the eligibility requirements established by the department under 76-4-104(6).

18 (5)(4) "Department" means the department of environmental quality.

19 (6)(5) "Extension of a public sewage system" means a sewerline that connects two or more sewer
20 service lines to a sewer main.

21 (7)(6) "Extension of a public water supply system" means a waterline that connects two or more water
22 service lines to a water main.

23 (8)(7) "Facilities" means public or private facilities for the supply of water or disposal of sewage or
24 solid waste and any pipes, conduits, or other stationary method by which water, sewage, or solid wastes might
25 be transported or distributed.

26 (9)(8) "Individual water system" means any water system that serves one living unit or commercial
27 unit and that is not a public water supply system as defined in 75-6-102.

28 (10)(9) "Mixing zone" has the meaning provided in 75-5-103.

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1 ~~(11)(10)~~ (a) "Proposed drainfield mixing zone" means a mixing zone submitted for approval under this
2 chapter after March 30, 2011.

3 ~~(b)~~ The term does not include drainfield mixing zones that existed or were approved under this
4 chapter prior to March 30, 2011.

5 ~~(12)(11)~~ (a) "Proposed well isolation zone" means a well isolation zone submitted for approval under
6 this chapter after October 1, 2013.

7 ~~(b)~~ The term does not include well isolation zones that existed or were approved under this chapter
8 prior to October 1, 2013.

9 (13)(12) "Public sewage system" or "public sewage disposal system" means a public sewage system
10 as defined in 75-6-102.

11 (14)(13) "Public water supply system" has the meaning provided in 75-6-102.

12 (15)(14) "Registered professional engineer" means a person licensed to practice as a professional
13 engineer under Title 37, chapter 67.

14 (16)(15) "Registered sanitarian" means a person licensed to practice as a sanitarian under Title 37,
15 chapter 40.

16 (17)(16) "Reviewing authority" means the department or a local department or board of health certified
17 to conduct a review under 76-4-104.

18 (18)(17) "Sanitary restriction" means a prohibition against the erection of any dwelling, shelter, or
19 building requiring facilities for the supply of water or the disposition of sewage or solid waste or the construction
20 of water supply or sewage or solid waste disposal facilities until the department has approved plans for those
21 facilities.

22 (19)(18) "Sewage" has the meaning provided in 75-5-103.

23 (20)(19) "Sewer service line" means a sewerline that connects a single building or living unit to a public
24 sewage system or to an extension of a public sewage system.

25 (21)(20) "Solid waste" has the meaning provided in 75-10-103.

26 (22)(21) "Subdivision" means a division of land or land so divided that creates one or more parcels
27 containing less than 20 acres, exclusive of public roadways, in order that the title to or possession of the
28 parcels may be sold, rented, leased, or otherwise conveyed and includes any resubdivision, any condominium,

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1 townhome, or townhouse, or any area, regardless of size, that provides permanent multiple space for
2 recreational camping vehicles or mobile homes.
3 ~~(23)(22)~~ "Water service line" means a waterline that connects a single building or living unit to a public
4 water supply system or to an extension of a public water supply system.
5 ~~(24)(23)~~ "Well isolation zone" means the area within a 100-foot radius of a water well."

7 **Section 153.** Section 76-4-108, MCA, is amended to read:

8 **"76-4-108.—Enforcement.** (1) If the reviewing authority has reason to believe that a violation of this
9 part or a rule adopted or an order issued under this part has occurred, the reviewing authority may have written
10 notice and an order served personally or by certified mail on the alleged violator or the alleged violator's agent.
11 The notice must state the provision alleged to be violated, the facts alleged to constitute the violation, the
12 corrective action required by the reviewing authority, and the time within which the action is to be taken. A
13 notice and order issued by the department under this section may also assess an administrative penalty as
14 provided in 76-4-109. The alleged violator may, no later than 30 days after service of a notice and order under
15 this section, request a hearing before the local reviewing authority if it issued the notice of violation or the board
16 department if the department issued the notice of violation. A request for a hearing must be filed in writing with
17 the appropriate entity and must state the reason for the request. If a request is filed, a hearing must be held
18 within a reasonable time.

19 (2) In addition to or instead of issuing an order, the reviewing authority may initiate any other
20 appropriate action to compel compliance with this part.

21 (3) The provisions of this part may be enforced by a reviewing authority other than the department or
22 board only for those divisions described in 76-4-104(3). If a local reviewing authority fails to adequately enforce
23 the provisions of this part, the department or the board may compel compliance with this part under the
24 provisions of this section.

25 (4) When a local reviewing authority exercises the authority delegated to it by this section, the local
26 reviewing authority is legally responsible for its actions under this part.

27 (5) If the department or a local reviewing authority determines that a violation of this part, a rule
28 adopted under this part, or an order issued under this part has occurred, the department or the local reviewing

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1 authority may revoke its certificate of approval for the subdivision and reimpose sanitary restrictions following
2 written notice to the alleged violator. Upon revocation of a certificate, the person aggrieved by revocation may
3 request a hearing. A hearing request must be filed in writing within 30 days after receipt of the notice of
4 revocation and must state the reason for the request. The hearing is before the board department if the
5 department revoked the certificate or before the local reviewing authority if the local reviewing authority revoked
6 the certificate.

7 (6) The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4,
8 part 6, apply to a hearing held under this section."

10 **Section 154.** Section 76-4-126, MCA, is amended to read:

11 **"76-4-126.—Right to hearing.** (1) Upon a denial of approval of subdivision plans and specifications
12 relating to environmental health facilities, the person who is aggrieved by the denial may request a hearing
13 before the board department. A hearing request must be filed, in writing, within 30 days after receipt of the
14 notice of denial and must state the reason for the request. The contested case provisions of the Montana
15 Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing held under this section.

16 (2) If the grounds for a denial of approval under this part include noncompliance with local laws or
17 regulations other than those adopting, pursuant to 50-2-116, state minimum standards for the control and
18 disposal of sewage, the board department shall upon receipt of a hearing request refer the local compliance
19 issues to the appropriate local authority. After opportunity for a hearing, the local authority shall issue a
20 determination regarding the local compliance issues, and the board department shall incorporate the
21 determination of the local authority in the board's final decision."

23 **Section 155.** Section 76-4-1001, MCA, is amended to read:

24 **"76-4-1001. Penalty factors.** (1) In determining the amount of an administrative or civil penalty to
25 which subsection (4) applies, the department of environmental quality or the district court, as appropriate, shall
26 take into account the following factors:

- 27 (a) the nature, extent, and gravity of the violation;
28 (b) the circumstances of the violation;

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- 1 (c) the violator's prior history of any violation, which:
- 2 (i) must be a violation of a requirement under the authority of the same chapter and part as the
- 3 violation for which the penalty is being assessed;
- 4 (ii) must be documented in an administrative order or a judicial order or judgment issued within 3 years
- 5 prior to the date of the occurrence of the violation for which the penalty is being assessed; and
- 6 (iii) may not, at the time that the penalty is being assessed, be undergoing or subject to administrative
- 7 appeal or judicial review;
- 8 (d) the economic benefit or savings resulting from the violator's action;
- 9 (e) the violator's good faith and cooperation;
- 10 (f) the amounts voluntarily expended by the violator, beyond what is required by law or order, to
- 11 address or mitigate the violation or impacts of the violation; and
- 12 (g) other matters that justice may require.
- 13 (2) After the amount of a penalty is determined under subsection (1), the department of environmental
- 14 quality or the district court, as appropriate, may consider the violator's financial ability to pay the penalty and
- 15 may institute a payment schedule or suspend all or a portion of the penalty.
- 16 (3) The department of environmental quality may accept a supplemental environmental project as
- 17 mitigation for a portion of the penalty. For purposes of this section, a "supplemental environmental project" is an
- 18 environmentally beneficial project that a violator agrees to undertake in settlement of an enforcement action but
- 19 which the violator is not otherwise legally required to perform.
- 20 (4) This section applies to penalties assessed by the department of environmental quality or the
- 21 district court under Title 75, chapters 2, 5, 6, 11, and 20; Title 75, chapter 10, parts 2, 4, 5, and 12; and Title 76,
- 22 chapter 4.
- 23 (5) ~~The board of environmental review and the department of environmental quality may, for the~~
- 24 ~~statutes listed in subsection (4) for which each has rulemaking authority,~~ adopt rules to implement this section."
- 25

26 **Section 156.** ~~Section 80-15-102, MCA, is amended to read:~~

27 ~~"80-15-102.—Definitions.—Unless the context requires otherwise, in this chapter, the following~~

28 ~~definitions apply:~~

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- 1 ~~(1)—"Agricultural chemical" means any of the following:~~
- 2 ~~(a)—a pesticide as defined in 80-8-102;~~
- 3 ~~(b)—an isomer, degradation, or metabolic product of a pesticide; or~~
- 4 ~~(c)—a commercial fertilizer as defined in 80-10-101;~~
- 5 ~~(2)—"Aquifer" means a water-bearing, subsurface formation capable of yielding sufficient quantities of~~
- 6 ~~water to a well for a beneficial use.~~
- 7 ~~(3)—"Best management plans" and "best management practices" mean activities, procedures, and~~
- 8 ~~practices established by the department, in consultation with the Montana state university-Bozeman extension~~
- 9 ~~service, to prevent or remedy the introduction of agricultural chemicals into ground water to the extent~~
- 10 ~~technically and economically practical.~~
- 11 ~~(4)—"Board" means the board of environmental review provided for in 2-15-3502.~~
- 12 ~~(5)(4)—"Confirmatory procedure" means a process for verifying the detection of agricultural chemicals~~
- 13 ~~in water, soil, and other related media.~~
- 14 ~~(6)(5)—"EPA" means the United States environmental protection agency.~~
- 15 ~~(7)(6)—"Ground water" means any water of the state occupying the voids within a geologic formation~~
- 16 ~~and within the zone of saturation.~~
- 17 ~~(8)(7)—"Interim numerical standard" means a health-based number that expresses the concentration of~~
- 18 ~~an agricultural chemical allowed in ground water and that is adopted by a rule of the board pursuant to 80-15-~~
- 19 ~~201(3) or (4).~~
- 20 ~~(9)(8)—"Margin of safety" means numerical margins that are applied to the no observable effect level in~~
- 21 ~~an agricultural chemical toxicology study and that are used by the EPA to extrapolate data obtained from~~
- 22 ~~studies of animals to humans, including sensitive individuals.~~
- 23 ~~(10)(9)—"No observable effect level" means the highest dose level of an agricultural chemical to which a~~
- 24 ~~laboratory animal is exposed, per unit of body weight, at which no effect is observed, as established by EPA's~~
- 25 ~~pesticide registration process.~~
- 26 ~~(11)(10)—"Nonpoint source" means a diffuse source of agricultural chemicals resulting from human~~
- 27 ~~activities over a relatively large area, the effects of which must normally be addressed or controlled by a~~
- 28 ~~management or conservation practice.~~

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1 ~~(12)(11)~~ "Nonpromulgated federal standard" means a health advisory or a suggested no-adverse
2 response level that is published but not promulgated by regulation by EPA and that is a suggested measure of
3 the health risk represented by the concentration of an agricultural chemical in water.
4 ~~(13)(12)~~ "Numerical risk assessment" means a scientific procedure used to measure the statistical
5 probability of human health risk associated with exposure to an agricultural chemical.
6 ~~(14)(13)~~ "Oncogenic potential" means the potential of an agricultural chemical to cause tumors in
7 laboratory animals and the extrapolation of that potential to humans through use of statistical models and other
8 evidence.
9 ~~(15)(14)~~ "Person" means any individual, group, firm, cooperative, corporation, association, partnership,
10 political subdivision, state or federal government agency, or other organization or entity.
11 ~~(16)(15)~~ "Point of standards application" means the specific location in an aquifer where ground water
12 quality and quantity are sampled, measured, evaluated, or otherwise used by either the department or the
13 department of environmental quality to implement the provisions of this chapter.
14 ~~(17)(16)~~ "Point source" means a point source as defined in 75-5-103, including but not limited to
15 chemical mixing, loading, and storage sites and sites of agricultural chemical spills.
16 ~~(18)(17)~~ "Promulgated federal standard" means an agricultural chemical maximum contaminant level
17 as established under the federal Safe Drinking Water Act, a national primary drinking water standard, or an
18 interim drinking water regulation or other EPA regulation based on federal law.
19 ~~(19)(18)~~ "Registrant" means a person as defined in 80-8-102 and 80-10-101.
20 ~~(20)(19)~~ "Standard" means the numerical value expressing the concentration of an agricultural
21 chemical in ground water that, when exceeded, presents a potential human health risk over a lifetime of
22 consumption and that is adopted by a rule of the board department of environmental quality as required by 80-
23 15-201.
24 ~~(21)(20)~~ "Use" means any act of handling or release of an agricultural chemical or exposure of humans
25 or the environment to an agricultural chemical, including but not limited to application, mixing, loading, storage,
26 disposal, or transportation."

27
28 **Section 157.** Section 80-15-105, MCA, is amended to read:

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1 **"80-15-105. Rulemaking.** (1) The board department of environmental quality, subject to the
2 provisions of 80-15-110, shall adopt rules for the administration of this chapter for which the board and the
3 department of environmental quality have has responsibility. These rules must include but are not limited to:
4 (a) standards and interim numerical standards for agricultural chemicals in ground water as
5 authorized by 80-15-201;
6 (b) procedures for ground water monitoring as authorized by 80-15-202 and 80-15-203;
7 (c) field and laboratory operational quality assurance, quality control, and confirmatory procedures
8 that are authorized by 80-15-107, 80-15-202, and 80-15-203 and that may include, through adoption by
9 reference, procedures that have been established or approved by EPA for quality assurance and quality
10 control;
11 (d) standards for maintaining the confidentiality of data and information declared confidential by EPA
12 and the confidentiality of chemical registrant data and information protected from disclosure by federal or state
13 law as required by 80-15-108; and
14 (e) administrative civil penalties as authorized by 80-15-412.
15 (2) The department shall adopt rules necessary to carry out its responsibilities under this chapter.
16 These rules must include but are not limited to:
17 (a) procedures for ground water monitoring as authorized by 80-15-202 and 80-15-203;
18 (b) the content and procedures for development of agricultural chemical ground water management
19 plans, including the content of best management practices and best management plans, procedures for
20 obtaining comments from the department of environmental quality on the plans, and the adoption of completed
21 plans and plan modifications as authorized by 80-15-211 through 80-15-218;
22 (c) standards for maintaining the confidentiality of data and information declared confidential by EPA
23 and of chemical registrant data and information protected from disclosure by federal or state law as required by
24 80-15-108;
25 (d) field and laboratory operational quality assurance, quality control, and confirmatory procedures
26 that are authorized by 80-15-107, 80-15-202, and 80-15-203 and that may include, through adoption by
27 reference, procedures that have been established or approved by EPA for quality assurance and quality
28 control;

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- (e) emergency procedures as authorized by 80-15-405;
(f) procedures for issuance of compliance orders as authorized by 80-15-403; and
(g) procedures for the assessment of administrative civil penalties as authorized by 80-15-412."

Section 158. Section 80-15-110, MCA, is amended to read:

"80-15-110. State regulations no more stringent than federal regulations or guidelines. (1) After April 14, 1995, except as provided in subsections (2) through (5) or unless required by state law, the board of environmental quality may not adopt a rule to implement this chapter that is more stringent than the comparable federal regulations or guidelines that address the same circumstances. The board-department of environmental quality may incorporate by reference comparable federal regulations or guidelines.

(2) The board-department of environmental quality may adopt a rule to implement this chapter that is more stringent than comparable federal regulations or guidelines only if the board-it makes a written finding after a public hearing and public comment and based on evidence in the record that:

- (a) the proposed state standard or requirement protects public health or the environment of the state; and
(b) the state standard or requirement to be imposed can mitigate harm to the public health or environment and is achievable under current technology.

(3) The written finding must reference information and peer-reviewed scientific studies contained in the record that forms the basis for the board's conclusion. The written finding must also include information from the hearing record regarding the costs to the regulated community that are directly attributable to the proposed state standard or requirement.

(4) (a) A person affected by a rule of the board-board of environmental review-adopted after January 1, 1990, and before April 14, 1995, that that person believes to be more stringent than comparable federal regulations or guidelines may petition the board-department-of-environmental-quality-board to review the rule. If the board-department-of-environmental-quality-board determines that the rule is more stringent than comparable federal regulations or guidelines, the-board-it-the department shall comply with this section by either revising the rule to conform to the federal regulations or guidelines or by making the written finding, as provided under subsection (2), within a reasonable period of time, not to exceed 12 months after receiving the

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petition. A petition under this section does not relieve the petitioner of the duty to comply with the challenged rule. The board-department-of-environmental-quality-board may charge a petition filing fee in an amount not to exceed \$250.

(b) A person may also petition the board-department-of-environmental-quality-board for a rule review under subsection (4)(a) if the board-of-environmental-review-adopts-adopted a rule after January 1, 1990, and before [the effective date of this act] in an area in which no federal regulations or guidelines existed and the federal government subsequently establishes comparable regulations or guidelines that are less stringent than the previously adopted board rule.

(5) This section does not apply to a rule adopted under the emergency rulemaking provisions of 2-4-303(1)."

Section 159. Section 80-15-201, MCA, is amended to read:

"80-15-201. Ground water standards. (1) The board-department of environmental quality shall adopt standards and, as applicable, interim numerical standards for agricultural chemicals in ground water. The standards must be the same as any promulgated or nonpromulgated federal standard established by EPA, although the board-department of environmental quality may determine, pursuant to the requirements of subsection (4), that an interim numerical standard different from either a promulgated or nonpromulgated federal standard is justified. Promulgated federal standards must receive preference. Except as provided in subsections (3) and (4), if more than one nonpromulgated federal standard exists for an agricultural chemical, the board-department of environmental quality must adopt the most recently established nonpromulgated federal standard.

(2) The board-department of environmental quality is not required to adopt a standard or interim numerical standard for each agricultural chemical registered in the state. The only standards and interim numerical standards required are for those agricultural chemicals:

- (a) that are addressed by promulgated and nonpromulgated federal standards;
(b) the presence of which has been verified in ground water as provided in 80-15-202; or
(c) that the department and the department of environmental quality predict may appear in ground water, in accordance with the procedures and determinations specified in 80-15-202 and 80-15-203.

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(3) If a promulgated federal standard has not been adopted or a nonpromulgated federal standard has not been published for an agricultural chemical for which the ~~board~~department of environmental quality is required to establish a standard or interim numerical standard as specified in subsections (2)(b) and (2)(c), the department of environmental quality shall request EPA to establish a promulgated or nonpromulgated federal standard. If the department of environmental quality determines that EPA cannot comply with the request within 15 days, the ~~board~~department of environmental quality shall adopt an interim numerical standard, provided that the ~~board~~department of environmental quality shall review the interim numerical standard whenever EPA adopts a promulgated federal standard or publishes a nonpromulgated federal standard for the agricultural chemical in question.

(4) The ~~board~~department of environmental quality may adopt an interim numerical standard that is different from either a promulgated or nonpromulgated federal standard if there is significant new and relevant technical information available that is scientifically valid. The ~~board~~department of environmental quality shall review the interim numerical standard when EPA establishes or revises the promulgated or nonpromulgated federal standard for the agricultural chemical in question.

(5) The ~~board~~department of environmental quality shall consider the following in adopting any interim numerical standard under either subsection (3) or (4):

(a) effects on a person weighing 70 kilograms and drinking 2 liters of water per day over a lifetime; and

(b) EPA's conclusions regarding the no observable effect level, including the margin of safety identified by EPA, when scientific data indicates oncogenic potential for the agricultural chemical and EPA has determined that a numerical risk assessment is not justified, is inappropriate, or does not serve as the primary toxicological basis for regulation.

(6) Nothing in this section may interfere with the ~~board's~~department of environmental quality's responsibility to adopt rules and standards under Title 75, chapter 6."

Section 160. Section 82-4-102, MCA, is amended to read:

"82-4-102. Intent -- findings -- policy and purpose. (1) The legislature, mindful of its constitutional obligations under Article II, section 3, and Article IX of the Montana constitution, has enacted The Strip and

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Underground Mine Siting Act. It is the legislature's intent that the requirements of this part provide adequate remedies for the protection of the environmental life support system from degradation and provide adequate remedies to prevent unreasonable depletion and degradation of natural resources.

(2) It is the policy of this state to provide adequate remedies for the protection of the environmental life support system from degradation and provide adequate remedies to prevent unreasonable depletion and degradation of natural resources.

(3) It is the purpose of this part:

(a) to vest in the department the authority to adopt rules and to review new strip-mine and new underground-mine site locations and reclamation plans and either approve or disapprove those locations and plans and to exercise general administration and enforcement of this part;

~~(b) to vest in the board the authority to adopt rules;~~

~~(e)(b)~~ to satisfy the requirement of Article IX, section 2, of the constitution of this state that all lands disturbed by the taking of natural resources be reclaimed; and

~~(d)(c)~~ to ensure that adequate information is available on areas proposed for strip mining or underground mining so that mining and reclamation plans may be properly formulated to accommodate areas that are suitable for strip mining or underground mining.

(4) This part is an exercise of the general police power to provide for the health and welfare of the people."

Section 161.~~Section 82-4-103, MCA, is amended to read:~~

~~"82-4-103. Definitions. When used in this part, unless a different meaning clearly appears from the context, the following definitions apply:~~

~~(1) "Board" means the board of environmental review provided for in 2-15-3502.~~

~~(2)(1) "Department" means the department of environmental quality provided for in 2-15-3501.~~

~~(3)(2) "Mineral" means mineral as defined in 82-4-203.~~

~~(4)(3) "New mine" means a strip or underground mining operation proposed for an area of land that the department determines, because of distance from an existing strip mine or underground mine operation or their respective facilities or because of important differences in topography, soils, wildlife, geologic structure,~~

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1 aquifers, or vegetation from an existing strip mine or underground mine operation, does not constitute an
2 expansion of an existing operation.
3 ~~(5)(4) "Operation" means all of the premises, facilities, railroad loops, roads, power lines, and~~
4 ~~equipment used in the process of producing and removing mineral from a designated strip mine or~~
5 ~~underground mine area.~~
6 ~~(6)(5) "Operator" means a person who intends to operate a new strip mine or new underground mine~~
7 ~~involving the removal of more than 10,000 cubic yards of mineral or overburden.~~
8 ~~(7)(6) "Person" means a person, partnership, corporation, association, or other legal entity or any~~
9 ~~political subdivision or agency of the state.~~
10 ~~(8)(7) "Preparatory work" means all onsite disturbances, excluding prospecting, associated with the~~
11 ~~initiation of a new strip mine or underground mine, including but not limited to the construction of railroad spurs~~
12 ~~or loops, buildings to house mining operations, roads, storage and train load-out facilities, transmission lines,~~
13 ~~erection of draglines and loading shovels, and other associated facilities.~~
14 ~~(9)(8) "Strip mining" means any part of the process followed in the production of mineral by the~~
15 ~~open cut method, including mining by the auger method or any similar method that penetrates a mineral deposit~~
16 ~~and removes mineral directly through a series of openings made by a machine that enters the deposit from a~~
17 ~~surface excavation or any other method or process in which the strata or overburden is removed or displaced in~~
18 ~~order to recover the mineral.~~
19 ~~(10)(9) "Underground mining" means any part of the process that is followed in the production of a~~
20 ~~mineral and that uses vertical or horizontal shafts, slopes, drifts, or incline planes connected with excavations~~
21 ~~penetrating the mineral stratum or strata."~~

Section 162. Section 82-4-112, MCA, is amended to read:

"82-4-112. Administration. (1) The department shall:

(a) adopt, after an opportunity for a hearing, general rules pertaining to new strip mines and to new
underground mines and preparatory work to accomplish the purposes of this part, rules regarding filing of
reports, issuance of permits, and other matters of procedure and administration;

(a)(b) exercise general supervision, administration, and enforcement of this part and all rules and

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1 orders adopted under this part;
2 (b)(c) issue orders requiring operators to adopt remedial measures necessary to comply with this part
3 and rules adopted under this part;
4 (c)(d) order the suspension of any permit for failure to comply with this part, any rule adopted under
5 this part, or a permit issued pursuant to this part;
6 (d)(e) issue an order revoking a permit when the requirements set forth by a notice of violation, order
7 of suspension, or order requiring remedial measures have not been complied with according to the terms in the
8 notice or order;
9 (e)(f) order the halting of any operation that is started without first having obtained a permit as
10 required by this part;
11 (f)(g) conduct investigations and inspections necessary to ensure compliance with this part; and
12 (g)(h) encourage and conduct investigations, research, experiments, and demonstrations and collect
13 and disseminate information relating to new strip mines, new underground mines, and reclamation of lands and
14 waters affected by preparatory work.
15 (2) The board department board shall conduct hearings under this part."
16
17 Section 163. Section 82-4-123, MCA, is amended to read:
18 "82-4-123. Permit fee and surety bond. A fee of \$50 shall be paid before the mine-site location
19 permit required in this part may be issued. The operator shall also file with the department a bond payable to
20 the state of Montana with surety satisfactory to the department in the penal sum to be determined by the
21 department of not less than \$200 or more than \$10,000 for each acre or fraction thereof of the area of land to
22 be disturbed by preparatory work, with a minimum bond of \$5,000, conditioned upon the faithful performance of
23 the requirements set forth in this part and of the rules of the board department. In determining the amount of the
24 bond within the above limits, the department shall take into consideration the character and nature of the
25 surface and subsurface disturbances, the future suitable use of the land involved, and the cost of removing or
26 burying facilities, subsidence stabilization, water controls, backfilling, grading, topsoiling, and reclamation to be
27 required. Notwithstanding the above limits, the bond may not be less than the total estimated cost to the state
28 of completing the work described in the reclamation plan."

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67th Legislature

Drafter: Joe Kolman, 406-444-3747

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Section 164. Section 82-4-129, MCA, is amended to read:

"82-4-129. Noncompliance -- suspension of permits. (1) If any of the requirements of this part or rules or orders of the department have not been complied with within the time limits set by the department or by this part, the department shall serve a notice of noncompliance on the operator or, when necessary, the director of the department shall order the suspension of a permit. The notice or order must be handed to the operator in person or served by certified mail addressed to the permanent address shown on the application for a permit. The notice of noncompliance or order of suspension must specify in what respects the operator has failed to comply with this part or the rules or orders of the department and the board ~~and the board~~. If the operator has not complied with the requirement set forth in the notice of noncompliance or order of suspension within time limits set in the notice or order, the permit may be revoked by order of the ~~board~~ department board and the performance bond forfeited to the department.

(2) Any additional strip-mining or underground-mining or mine-site location permits held by an operator whose mine-site location permit has been revoked must be suspended, and the operator is not eligible to receive another permit or to have the suspended permits reinstated until the operator has complied with all the requirements of this part with respect to previous permits issued to the operator. An operator who has forfeited a bond is not eligible to receive another permit unless the land for which the bond was forfeited has been reclaimed without cost to the state or the operator has paid into the reclamation account a sum together with the value of the bond the department finds adequate to reclaim the lands. The department may not issue any additional permits to an operator who has repeatedly been in noncompliance or violation of this part."

Section 165. Section 82-4-130, MCA, is amended to read:

"82-4-130. Procedure for hearings. (1) A person aggrieved by a final decision of the department under this part may request a hearing before the ~~board~~ department by submitting a written request stating the reason for the request within 30 days after the department's decision.

(2) The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing held under this part."

Amendment - 1st Reading - Requested by: Duane Ankney

67th Legislature

Drafter: Joe Kolman, 406-444-3747

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Section 166. Section 82-4-203, MCA, is amended to read:

"82-4-203. Definitions. Unless the context requires otherwise, in this part, the following definitions apply:

(1) "Abandoned" means an operation in which a mineral is not being produced and that the department determines will not continue or resume operation.

(2) "Adjacent area" means the area outside the permit area where a resource or resources, determined in the context in which the term is used, are or could reasonably be expected to be adversely affected by proposed mining operations, including probable impacts from underground workings.

(3) (a) "Alluvial valley floor" means the unconsolidated stream-laid deposits holding streams where water availability is sufficient for subirrigation or flood irrigation agricultural activities.

(b) The term does not include upland areas that are generally overlain by a thin veneer of colluvial deposits composed chiefly of debris from sheet erosion and deposits by unconcentrated runoff or slope wash, together with talus, other mass movement accumulation, and windblown deposits.

(4) "Approximate original contour" means that surface configuration achieved by backfilling and grading of the mined area so that the reclaimed area, including any terracing or access roads, closely resembles the general surface configuration of the land prior to mining and blends into and complements the drainage pattern of the surrounding terrain, with all highwalls, spoil piles, and coal refuse piles eliminated, so that:

(a) the reclaimed terrain closely resembles the general surface configuration if it is comparable to the premine terrain. For example, if the area was basically level or gently rolling before mining, it should retain these features after mining, recognizing that rolls and dips need not be restored to their original locations and that level areas may be increased.

(b) the reclaimed area blends with and complements the drainage pattern of the surrounding area so that water intercepted within or from the surrounding terrain flows through and from the reclaimed area in an unobstructed and controlled manner;

(c) postmining drainage basins may differ in size, location, configuration, orientation, and density of ephemeral drainageways compared to the premining topography if they are hydrologically stable, soil erosion is controlled to the extent appropriate for the postmining land use, and the hydrologic balance is protected; and

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- 1 (d)—the reclaimed surface configuration is appropriate for the postmining land use.
- 2 (5)—"Aquifer" means any geologic formation or natural zone beneath the earth's surface that contains
- 3 or stores water and transmits it from one point to another in quantities that permit or have the potential to permit
- 4 economic development as a water source.
- 5 (6)—(a) "Area of land affected" means the area of land from which overburden is to be or has been
- 6 removed and upon which the overburden is to be or has been deposited.
- 7 (b)—The term includes:
- 8 (i)—all land overlying any tunnels, shafts, or other excavations used to extract the mineral;
- 9 (ii)—lands affected by the construction of new railroad loops and roads or the improvement or use of
- 10 existing railroad loops and roads to gain access and to haul the mineral;
- 11 (iii)—processing facilities at or near the mine site or other mine-associated facilities, waste deposition
- 12 areas, treatment ponds, and any other surface or subsurface disturbance associated with strip mining or
- 13 underground mining; and
- 14 (iv)—all activities necessary and incident to the reclamation of the mining operations.
- 15 (7)—"Bench" means the ledge, shelf, table, or terrace formed in the contour method of strip mining.
- 16 (8)—"Board" means the board of environmental review provided for in 2-15-3502.
- 17 (9)(8)—"Coal conservation plan" means the planned course of conduct of a strip—or underground—
- 18 mining operation and includes plans for the removal and use of minable and marketable coal located within the
- 19 area planned to be mined.
- 20 (10)(9)—(a) "Coal preparation" means the chemical or physical processing of coal and its cleaning,
- 21 concentrating, or other processing or preparation.
- 22 (b)—The term does not mean the conversion of coal to another energy form or to a gaseous or liquid
- 23 hydrocarbon, except for incidental amounts that do not leave the plant, nor does the term mean processing for
- 24 other than commercial purposes.
- 25 (11)(10)—"Coal preparation plant" means a commercial facility where coal is subject to coal preparation.
- 26 The term includes commercial facilities associated with coal preparation activities but is not limited to loading
- 27 buildings, water treatment facilities, water storage facilities, settling basins and impoundments, and coal
- 28 processing and other waste disposal areas.

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- 1 (12)(11)—"Contour strip mining" means that strip mining method commonly carried out in areas of rough
- 2 and hilly topography in which the coal or mineral seam outcrops along the side of the slope and entrance are
- 3 made to the seam by excavating a bench or table cut at and along the site of the seam outcropping, with the
- 4 excavated overburden commonly being cast down the slope below the mineral seam and the operating bench.
- 5 (13)(12)—"Cropland" means land used for the production of adapted crops for harvest, alone or in
- 6 rotation with grasses and legumes, that include row crops, small grain crops, hay crops, nursery crops, orchard
- 7 crops, and other similar crops.
- 8 (14)(13)—"Degree" means a measurement from the horizontal. In each case, the measurement is
- 9 subject to a tolerance of 5% error.
- 10 (15)(14)—"Department" means the department of environmental quality provided for in 2-15-3501.
- 11 (16)(15)—"Developed water resources" means land used for storing water for beneficial uses, such as
- 12 stockponds, irrigation, fire protection, flood control, and water supply.
- 13 (17)(16)—"Ephemeral drainageway" means a drainageway that flows only in response to precipitation in
- 14 the immediate watershed or in response to the melting of snow or ice and is always above the local water table.
- 15 (18)(17)—"Failure to conserve coal" means the nonremoval or nonuse of minable and marketable coal
- 16 by an operation. However, the nonremoval or nonuse of minable and marketable coal that occurs because of
- 17 compliance with reclamation standards established by the department is not considered failure to conserve
- 18 coal.
- 19 (19)(18)—"Fill bench" means that portion of a bench or table that is formed by depositing overburden
- 20 beyond or downslope from the cut section as formed in the contour method of strip mining.
- 21 (20)(19)—"Fish and wildlife habitat" means land dedicated wholly or partially to the production,
- 22 protection, or management of species of fish or wildlife.
- 23 (21)(20)—"Forestry" means land used or managed for the long-term production of wood, wood fiber, or
- 24 wood-derived products.
- 25 (22)(21)—"Grazing land" means land used for grasslands and forest lands where the indigenous
- 26 vegetation is actively managed for livestock grazing or browsing or occasional hay production.
- 27 (23)(22)—"Higher or better uses" means postmining land uses that have a higher economic value or
- 28 noneconomic benefit to the landowner or the community than the premining land uses.

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1 (24)(23) "Hydrologic balance" means the relationship between the quality and quantity of water inflow
2 to, water outflow from, and water storage in a hydrologic unit, such as a drainage basin, aquifer, soil zone, lake,
3 or reservoir, and encompasses the dynamic relationships among precipitation, runoff, evaporation, and
4 changes in ground water and surface water storage.

5 (25)(24) "Imminent danger to the health and safety of the public" means the existence of any condition
6 or practice or any violation of a permit or other requirement of this part in a strip or underground coal mining
7 and reclamation operation that could reasonably be expected to cause substantial physical harm to persons
8 outside the permit area before the condition, practice, or violation can be abated. A reasonable expectation of
9 death or serious injury before abatement exists if a rational person, subjected to the same conditions or
10 practices giving rise to the peril, would not willingly be exposed to the danger during the time necessary for
11 abatement.

12 (26)(25) "Industrial or commercial" means land used for:

13 (a) extraction or transformation of materials for fabrication of products, wholesaling of products, or
14 long-term storage of products. This includes all heavy and light manufacturing facilities.

15 (b) retail or trade of goods or services, including hotels, motels, stores, restaurants, and other
16 commercial establishments.

17 (27)(26) (a) "In situ coal gasification" means a method of in-place coal mining where limited quantities
18 of overburden are disturbed to install a conduit or well and coal is mined by injecting or recovering a liquid,
19 solid, sludge, or gas that causes the leaching, dissolution, gasification, liquefaction, or extraction of the coal.

20 (b) In situ coal gasification does not include the storage of carbon dioxide in a geologic storage
21 reservoir, the primary or enhanced recovery of naturally occurring oil and gas, or any related process regulated
22 by the board of oil and gas conservation pursuant to Title 82, chapter 11.

23 (28)(27) "Intermittent stream" means a stream or reach of a stream that is below the water table for at
24 least some part of the year and that obtains its flow from both ground water discharge and surface runoff.

25 (29)(28) "Land use" means specific uses or management-related activities, rather than the vegetative
26 cover of the land. Land uses may be identified in combination when joint or seasonal uses occur and may
27 include land used for support facilities that are an integral part of the land use. Land use categories include
28 cropland, developed water resources, fish and wildlife habitat, forestry, grazing land, industrial or commercial,

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1 pastureland, land occasionally cut for hay, recreation, or residential.

2 (30)(29) "Marketable coal" means a minable coal that is economically feasible to mine and is fit for sale
3 in the usual course of trade.

4 (31)(30) "Material damage" means, with respect to protection of the hydrologic balance, degradation or
5 reduction by coal mining and reclamation operations of the quality or quantity of water outside of the permit
6 area in a manner or to an extent that land uses or beneficial uses of water are adversely affected, water quality
7 standards are violated, or water rights are impacted. Violation of a water quality standard, whether or not an
8 existing water use is affected, is material damage.

9 (32)(31) "Method of operation" means the method or manner by which the cut, open pit, shaft, or
10 excavation is made, the overburden is placed or handled, water is controlled, and other acts are performed by
11 the operator in the process of uncovering and removing the minerals that affect the reclamation of the area of
12 land affected.

13 (33)(32) "Minaable coal" means that coal that can be removed through strip or underground mining
14 methods adaptable to the location that coal is being mined or is planned to be mined.

15 (34)(33) "Mineral" means coal and uranium.

16 (35)(34) "Operation" means:

17 (a) all of the premises, facilities, railroad loops, roads, and equipment used in the process of
18 producing and removing mineral from and reclaiming a designated strip mine or underground mine area,
19 including coal preparation plants; and

20 (b) all activities, including excavation incident to operations, or prospecting for the purpose of
21 determining the location, quality, or quantity of a natural mineral deposit.

22 (36)(35) "Operator" means a person engaged in:

23 (a) strip mining or underground mining who removes or intends to remove more than 10,000 cubic
24 yards of mineral or overburden;

25 (b) coal mining who removes or intends to remove more than 250 tons of coal from the earth by
26 mining within 12 consecutive calendar months in any one location;

27 (c) operating a coal preparation plant; or

28 (d) uranium mining using in situ methods.

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1 (37)(36) "Overburden" means:

2 (a) —all of the earth and other materials that lie above a natural mineral deposit; and

3 (b) —the earth and other material after removal from their natural state in the process of mining;

4 (38)(37) "Pastureland" means land used primarily for the long-term production of adapted,

5 domesticated forage plants to be grazed by livestock or occasionally cut and cured for livestock feed;

6 (39)(38) "Perennial stream" means a stream or part of a stream that flows continuously during all of the

7 calendar year as a result of ground-water discharge or surface runoff;

8 (40)(39) "Person" means a person, partnership, corporation, association, or other legal entity or any

9 political subdivision or agency of the state or federal government;

10 (41)(40) "Prime farmland" means land that:

11 (a) —meets the criteria for prime farmland prescribed by the United States secretary of agriculture in the

12 Federal Register; and

13 (b) —historically has been used for intensive agricultural purposes;

14 (42)(41) "Prospecting" means:

15 (a) —the gathering of surface or subsurface geologic, physical, or chemical data by mapping, trenching,

16 or geophysical or other techniques necessary to determine:

17 (i) —the quality and quantity of overburden in an area; or

18 (ii) —the location, quantity, or quality of a mineral deposit; or

19 (b) —the gathering of environmental data to establish the conditions of an area before beginning strip-

20 or underground coal mining and reclamation operations under this part;

21 (43)(42) "Reclamation" means backfilling, subsidence stabilization, water control, grading, highwall

22 reduction, topsoiling, planting, revegetation, and other work conducted on lands affected by strip mining or

23 underground mining under a plan approved by the department to make those lands capable of supporting the

24 uses that those lands were capable of supporting prior to any mining or to higher or better uses;

25 (44)(43) "Recovery fluid" means any material that flows or moves, whether in semisolid, liquid, sludge,

26 gas, or some other form or state, used to dissolve, leach, gasify, or extract coal;

27 (45)(44) "Recreation" means land used for public or private leisure time activities, including developed

28 recreation facilities, such as parks, camps, and amusement areas, as well as areas for less intensive uses;

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1 such as hiking, canoeing, and other undeveloped recreational uses;

2 (46)(45) "Reference area" means a land unit maintained under appropriate management for the

3 purpose of measuring vegetation ground cover, productivity, and plant species diversity that are produced

4 naturally or by crop production methods approved by the department. Reference areas must be representative

5 of geology, soil, slope, and vegetation in the permit area;

6 (47)(46) "Remining" means conducting surface coal mining and reclamation operations that affect

7 previously mined areas (for example, the recovery of additional mineral from existing gob or tailings piles);

8 (48)(47) "Residential" means land used for single and multiple family housing, mobile home parks, or

9 other residential lodgings;

10 (49)(48) "Restore" or "restoration" means reestablishment after mining and reclamation of the land use

11 that existed prior to mining or to higher or better uses;

12 (50)(49) (a) "Strip mining" means any part of the process followed in the production of mineral by the

13 opencut method, including mining by the auger method or any similar method that penetrates a mineral deposit

14 and removes mineral directly through a series of openings made by a machine that enters the deposit from a

15 surface excavation or any other mining method or process in which the strata or overburden is removed or

16 displaced in order to recover the mineral;

17 (b) For the purposes of this part only, strip mining also includes remining and coal preparation;

18 (c) The terms "remining" and "coal preparation" are not included in the definition of "strip mining" for

19 purposes of Title 15, chapter 35, part 1;

20 (51)(50) "Subsidence" means a vertically downward movement of overburden materials resulting from

21 the actual mining of an underlying mineral deposit or associated underground excavations;

22 (52)(51) "Surface owner" means:

23 (a) —a person who holds legal or equitable title to the land surface;

24 (b) —a person who personally conducts farming or ranching operations upon a farm or ranch unit to be

25 directly affected by strip mining operations or who receives directly a significant portion of income from farming

26 or ranching operations;

27 (c) —the state of Montana when the state owns the surface; or

28 (d) —the appropriate federal land management agency when the United States government owns the

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1 ~~surface.~~
2 ~~(53)(52) "Topsoil" means the unconsolidated mineral matter that is naturally present on the surface of~~
3 ~~the earth, that has been subjected to and influenced by genetic and environmental factors of parent material,~~
4 ~~climate, macroorganisms and microorganisms, and topography, all acting over a period of time, and that is~~
5 ~~necessary for the growth and regeneration of vegetation on the surface of the earth.~~
6 ~~(54)(53) "Underground mining" means any part of the process that is followed in the production of a~~
7 ~~mineral and that uses vertical or horizontal shafts, slopes, drifts, or incline planes connected with excavations~~
8 ~~penetrating the mineral stratum or strata. The term includes mining by in situ methods.~~
9 ~~(55)(54) "Unwarranted failure to comply" means:~~
10 ~~(a) the failure of a permittee to prevent the occurrence of any violation of a permit or any requirement~~
11 ~~of this part because of indifference, lack of diligence, or lack of reasonable care; or~~
12 ~~(b) the failure to abate any violation of a permit or of this part because of indifference, lack of~~
13 ~~diligence, or lack of reasonable care.~~
14 ~~(56)(55) "Waiver" means a document that demonstrates the clear intention to release rights in the~~
15 ~~surface estate for the purpose of permitting the extraction of subsurface minerals by strip mining methods.~~
16 ~~(57)(56) "Wildlife habitat enhancement feature" means a component of the reclaimed landscape,~~
17 ~~established in conjunction with land uses other than fish and wildlife habitat, for the benefit of wildlife species,~~
18 ~~including but not limited to tree and shrub plantings, food plots, wetland areas, water sources, rock outcrops,~~
19 ~~microtopography, or raptor perches.~~
20 ~~(58)(57) "Written consent" means a statement that is executed by the owner of the surface estate and~~
21 ~~that is written on a form approved by the department to demonstrate that the owner consents to entry of an~~
22 ~~operator for the purpose of conducting strip mining operations and that the consent is given only to strip mining~~
23 ~~and reclamation operations that fully comply with the terms and requirements of this part."~~

24
25 **Section 167.** Section 82-4-205, MCA, is amended to read:

26 **"82-4-205. Administration by department and board and board. (1) The department shall adopt,**
27 **after an opportunity for a hearing, general rules pertaining to strip mining and to underground mining to**
28 **accomplish the purposes of this part. The department may adopt rules with respect to filing of reports, issuance**

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1 of permits, monitoring, and other matters of procedure and administration.
2 ~~(4)(2)~~ The department:
3 (a) shall exercise general supervision, administration, and enforcement of this part and all rules and
4 orders adopted under this part;
5 (b) shall review for approval or disapproval all plans and specifications submitted by an operator for
6 the method of operation, subsidence stabilization, water control, backfilling, grading, highwall reduction, and
7 topsoiling and for the reclamation of the area of land affected by the operator's operation;
8 (c) shall issue orders requiring an operator to adopt the remedial measures necessary to comply with
9 this part and rules adopted under this part;
10 (d) shall order the suspension of any permit for failure to comply with this part or a rule adopted under
11 this part;
12 (e) shall issue an order revoking a permit when the requirements set forth by a notice of violation,
13 order of suspension, or order requiring remedial measures have not been complied with according to the terms
14 in the notice or order;
15 (f) shall order the halting of any operation that is started without first having obtained a permit as
16 required by this part or order the cessation of operations not in compliance with this part in accordance with 82-
17 4-251;
18 (g) shall conduct public hearings required under this part or rules adopted ~~by the board~~ pursuant to
19 this part;
20 (h) shall conduct investigations and inspections necessary to ensure compliance with this part;
21 ~~(i) shall conduct contested case hearings under this part; and~~
22 ~~(4)(1)(i)~~ may encourage and conduct investigations, research, experiments, and demonstrations and
23 collect and disseminate information relating to strip mining and to underground mining and reclamation of lands
24 and waters affected by strip mining and underground mining.
25 ~~(2) The board shall conduct contested case hearings under this part.~~
26 (2) The board shall conduct contested case hearings under this part."
27
28 **Section 168.** ~~Section 82-4-206, MCA, is amended to read:~~

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~~"82-4-206.—Procedure for contested case hearings.—(1) An applicant, permittee, or person with an interest that is or may be adversely affected may request a hearing before the board department on any of the following decisions of the department by submitting a written request stating the reason for the request within 30 days after the department's decision:~~

~~(a)—approval or denial of an application for a permit pursuant to 82-4-231;~~

~~(b)—approval or denial of an application for a prospecting permit pursuant to 82-4-226;~~

~~(c)—approval or denial of an application to increase or reduce a permit area pursuant to 82-4-225;~~

~~(d)—approval or denial of an application to renew or revise a permit pursuant to 82-4-224; or~~

~~(e)—approval or denial of an application to transfer a permit pursuant to 82-4-238 or 82-4-250.~~

~~(2)—The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing before the board department under subsection (1)."~~

Section 169. Section 82-4-207, MCA, is amended to read:

"82-4-207. Rulemaking -- in situ coal gasification. (1) Within 1 year of October 1, 2011, and in accordance with subsection (3), the board department shall adopt rules necessary to regulate underground mining using in situ coal gasification.

(2) Unless required by this part, the board department may not adopt a rule to regulate in situ coal gasification that is more stringent than the comparable federal regulations or guidelines that address the same circumstances.

(3) The board department shall solicit, document, consider, and address comments from the board of oil and gas conservation provided for in 2-15-3303 in developing rules pursuant to subsection (1)."

Section 170. Section 82-4-223, MCA, is amended to read:

"82-4-223. Surety bond. (1) Before a permit may be issued, the operator shall file with the department a bond payable to the state of Montana with surety satisfactory to the department in an amount to be determined by the department of not less than \$200 for each acre or fraction of an acre of the area of land affected, with a minimum bond of \$10,000, conditioned upon the faithful performance of the requirements set forth in this part and of the rules of the board department. The operator may elect to deposit cash, negotiable

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bonds, or negotiable certificates of deposit of any bank organized or transacting business in the United States. The cash deposit or market value of these securities must be equal to or greater than the amount of the bond required for the bonded area. The level of bonding must be relative to the degree of disturbance projected by the original permit and the annual report. A political subdivision or agency of the state need not file a bond unless required to do so by the department. The department shall adjust the amount of bond required if the cost of reclamation changes.

(2) In determining the amount of the bond, the department shall take into consideration the character and nature of the overburden, the future suitable use of the land involved, and the cost of backfilling, grading, highwall reduction, subsidence stabilization, water control, topsoiling, and reclamation to be required, but the bond may not be less than the total estimated cost to the state of completing the work described in the reclamation plan."

Section 171. Section 82-4-226, MCA, is amended to read:

"82-4-226. Prospecting permit. (1) Except as provided in subsection (7), prospecting by any person on land not included in a valid strip-mining or underground-mining permit is unlawful without possessing a valid prospecting permit issued by the department as provided in this section. A prospecting permit may not be issued until the person submits an application, the application is examined, amended if necessary, and approved by the department, and an adequate reclamation performance bond is posted, all of which prerequisites must be done in conformity with the requirements of this part.

(2) An application for a prospecting permit filed pursuant to subsection (1) must be made in writing, notarized, and submitted to the department upon forms prepared and furnished by it. The application must include among other things a prospecting map and a prospecting reclamation plan of substantially the same character as required for a surface-mining or underground-mining map and reclamation plan under this part. The department shall determine by rules the precise nature of the required prospecting map and reclamation plan. Any applicant who intends to prospect by means of core drilling shall specify the location and number of holes to be drilled, methods to be used in sealing aquifers, and other information that may be required by the department. The applicant shall state what types of prospecting and excavating techniques will be employed on the affected land. The application must also include any other or further information that the department may

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- 1 require.
- 2 (3) Before the department gives final approval to the prospecting permit application, the applicant
- 3 shall file with the department a reclamation and revegetation bond in a form and in an amount as determined in
- 4 the same manner for strip-mining or underground-mining reclamation and revegetation bonds under this part.
- 5 (4) In the event that the holder of a prospecting permit desires to strip mine or underground mine the
- 6 area covered by the prospecting permit and has fulfilled all the requirements for a strip-mining or underground-
- 7 mining permit, the department may permit the postponement of the reclamation of the acreage prospected if
- 8 that acreage is incorporated into the complete reclamation plan submitted with the application for a strip-mining
- 9 or underground-mining permit. Any land actually affected by prospecting or excavating under a prospecting
- 10 permit and not covered by the strip-mining or underground-mining reclamation plan must be promptly
- 11 reclaimed.
- 12 (5) The prospecting permit is valid for 1 year and is subject to renewal, suspension, and revocation in
- 13 the same manner as strip-mining or underground-mining permits under this part.
- 14 (6) The holder of the prospecting permit shall file with the department the same progress reports,
- 15 maps, and revegetation progress reports as are required of strip-mining or underground-mining operators under
- 16 this part.
- 17 (7) (a) Prospecting that is not conducted in an area designated unsuitable for coal mining pursuant to
- 18 82-4-227 or 82-4-228, that is not conducted for the purpose of determining the location, quality, or quantity of a
- 19 mineral deposit, and that does not remove more than 250 tons of coal is not subject to subsections (1) through
- 20 (6). However, a person who conducts prospecting described in this subsection (7)(a) shall file with the
- 21 department a notice of intent to prospect that contains the information required by the department before
- 22 commencing prospecting operations. If this prospecting substantially disturbs the natural land surface, it must
- 23 be conducted in accordance with the performance standards of the ~~board's department's~~ rules regulating the
- 24 conduct and reclamation of prospecting operations that remove coal. The department may inspect these
- 25 prospecting and reclamation operations at any reasonable time.
- 26 (b) (i) Prospecting conducted to determine the location, quality, or quantity of coal outside an area
- 27 designated unsuitable that is not included in a valid strip-mining or underground-mining permit, that does not
- 28 substantially disturb the land surface, and that does not remove more than 250 tons of coal is not subject to

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- 1 subsections (1) and (2) but may not be conducted without a valid prospecting permit issued pursuant to
- 2 subsection (8).
- 3 (ii) For purposes of this subsection (7)(b), the drilling of coal prospecting holes, the installation and use
- 4 of associated disposal pits, and the installation of ground water monitoring wells does not constitute substantial
- 5 disturbance.
- 6 (8) (a) An application for a coal prospecting permit required by subsection (7)(b) must contain:
- 7 (i) the name, address, and telephone number of the person who seeks to prospect;
- 8 (ii) the name, address, and telephone number of the person's representative who will be present at and
- 9 responsible for conducting the prospecting activities;
- 10 (iii) a narrative describing the proposed prospecting area or a map of the prospecting area at a scale of
- 11 1:24,000 or greater showing:
- 12 (A) the general location of drill holes and trenches;
- 13 (B) existing and proposed roads;
- 14 (C) occupied dwellings;
- 15 (D) topographic features;
- 16 (E) bodies of water; and
- 17 (F) pipelines;
- 18 (iv) a copy of the documents upon which the applicant bases its legal right to prospect, including
- 19 documentation that the owners of the land affected have been notified and understand that the department will
- 20 make investigations and inspections to ensure compliance;
- 21 (v) a statement of the period of intended prospecting; and
- 22 (vi) a description of the method of prospecting to be used and the practices that will be followed to
- 23 protect the environment and reclaim disturbed areas, including plugging of prospecting holes, in accordance
- 24 with rules adopted by the ~~board~~ department.
- 25 (b) Within 10 working days of receipt of an application, the department shall notify the applicant in
- 26 writing as to whether the application is complete and preliminarily acceptable. If the department determines that
- 27 the application is not complete or not preliminarily acceptable, the department shall include a detailed
- 28 identification of information necessary to cure the deficiency.

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1 (c) Within 5 working days of receipt of the applicant's response to the identified deficiencies, the
2 department shall review the response and notify the person as to whether the application is complete and
3 preliminarily acceptable. If the department determines the application is not complete or preliminarily
4 acceptable, the department shall notify the person in writing and include a detailed identification of information
5 necessary to make the application complete and preliminarily acceptable.

6 (d) When the department determines that the application is complete and preliminarily acceptable, the
7 department shall notify the applicant in writing. The notification must include the amount of bond that is required
8 to be posted in order for the permit to be issued.

9 (e) Upon receipt of the department's determination of preliminary acceptability, the applicant shall
10 place an advertisement in a newspaper of general circulation in the locality of the proposed prospecting. The
11 notice must describe the application and a place in the locality where the public may examine the application
12 and must notify the public that it may submit written comments by delivering or mailing them to the department
13 within 10 days following publication of the notice.

14 (f) After close of the public comment period, the department shall notify the applicant as to whether
15 the application is acceptable. The department shall issue the notification within 5 working days of the close of
16 the comment period if no comments are received and within 10 working days if comments are received. In the
17 notice of acceptability, the department shall notify the applicant of any adjustment in the amount of the bond.

18 (g) A permit issued pursuant to this subsection (8) is subject to subsections (3) through (6)."

19
20 **Section 172.** Section 82-4-227, MCA, is amended to read:

21 **"82-4-227.—Refusal of permit—applicant violator system.** (1) An application for a prospecting;
22 strip-mining, or underground-mining permit or major revision may not be approved by the department unless,
23 on the basis of the information set forth in the application, in an onsite inspection, and in an evaluation of the
24 operation by the department, the applicant has affirmatively demonstrated that the requirements of this part and
25 rules will be observed and that the proposed method of operation, backfilling, grading, subsidence stabilization,
26 water control, highwall reduction, topsoiling, revegetation, or reclamation of the affected area can be carried out
27 consistently with the purpose of this part. The applicant for a permit or major revision has the burden of
28 establishing that the application is in compliance with this part and the rules adopted under it.

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1 ~~(2)—The department may not approve the application for a prospecting, strip-mining, or underground-~~
2 ~~mining permit when the area of land described in the application includes land that has special, exceptional,~~
3 ~~critical, or unique characteristics or when mining or prospecting on that area would adversely affect the use,~~
4 ~~enjoyment, or fundamental character of neighboring land that has special, exceptional, critical, or unique~~
5 ~~characteristics. For the purposes of this part, land is defined as having these characteristics if it possesses~~
6 ~~special, exceptional, critical, or unique:~~

7 ~~(a)—biological productivity, the loss of which would jeopardize certain species of wildlife or domestic~~
8 ~~stock;~~

9 ~~(b)—ecological fragility, in the sense that the land, once adversely affected, could not return to its~~
10 ~~former ecological role in the reasonably foreseeable future;~~

11 ~~(c)—ecological importance, in the sense that the particular land has such a strong influence on the total~~
12 ~~ecosystem of which it is a part that even temporary effects felt by it could precipitate a systemwide reaction of~~
13 ~~unpredictable scope or dimensions; or~~

14 ~~(d)—scenic, historic, archaeologic, topographic, geologic, ethnologic, scientific, cultural, or recreational~~
15 ~~significance. In applying the provisions of this subsection (2)(d), particular attention should be paid to the~~
16 ~~inadequate preservation previously accorded Plains Indian history and culture.~~

17 ~~(3)—The department may not approve an application for a strip— or underground coal-mining permit or~~
18 ~~major revision unless the application affirmatively demonstrates that:~~

19 ~~(a)—the assessment of the probable cumulative impact of all anticipated mining in the area on the~~
20 ~~hydrologic balance has been made by the department and the proposed operation of the mining operation has~~
21 ~~been designed to prevent material damage to the hydrologic balance outside the permit area; and~~

22 ~~(b)—the proposed strip— or underground coal-mining operation would not:~~

23 ~~(i)—interrupt, discontinue, or preclude farming on alluvial valley floors that are irrigated or naturally~~
24 ~~subirrigated, excluding undeveloped rangelands that are not significant to farming on alluvial valley floors and~~
25 ~~excluding land about which the department finds that if any farming will be interrupted, discontinued, or~~
26 ~~precluded, it is of such small acreage as to be of negligible impact on the farm's agricultural production; or~~

27 ~~(ii)—materially damage the quantity or quality of water in surface water or underground water systems~~
28 ~~that supply the valley floors described in subsection (3)(b)(i).~~

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1 ~~(4)—Subsection (3)(b) does not affect those strip— or underground coal-mining operations that in the~~
2 ~~year preceding the enactment of Public Law 95-87 produced coal in commercial quantities and were located~~
3 ~~within or adjacent to alluvial valley floors or had obtained specific permit approval by the department to conduct~~
4 ~~strip— or underground coal-mining operations within alluvial valley floors. If coal deposits are precluded from~~
5 ~~being mined under this subsection, the director of the department shall certify to the secretary of interior that the~~
6 ~~mineral owner or lessee may be eligible for participation in coal exchange programs pursuant to section 5-10(5)~~
7 ~~of Public Law 95-87.~~

8 ~~(5)—(a) If the area proposed to be mined contains prime farmland, the department may not grant a~~
9 ~~permit to mine coal on the prime farmland unless it finds in writing that the applicant:~~

10 ~~(i) has the technological capability to restore the mined area, within a reasonable time, to levels of~~
11 ~~yield equivalent to or higher than nonmined prime farmland in the surrounding area under equivalent levels of~~
12 ~~management; and~~

13 ~~(ii) can meet the soil reconstruction standards of 82-4-232(3).~~

14 ~~(b) Nothing in this subsection (5) applies to a permit issued prior to August 3, 1977, or to any~~
15 ~~revisions or renewals of the permit or to any existing strip— or underground mining operations for which a permit~~
16 ~~was issued prior to August 3, 1977.~~

17 ~~(6) If the department finds that the overburden on any part of the area of land described in the~~
18 ~~application for a prospecting, strip-mining, or underground mining permit is such that experience in the state~~
19 ~~with a similar type of operation upon land with similar overburden shows that substantial deposition of sediment~~
20 ~~in streambeds, subsidence, landslides, or water pollution cannot feasibly be prevented, the department shall~~
21 ~~delete that part of the land described in the application upon which the overburden exists. The burden is on the~~
22 ~~applicant to demonstrate that any area should not be deleted under this subsection.~~

23 ~~(7) If the department finds that the operation will constitute a hazard to a dwelling, public building,~~
24 ~~school, church, cemetery, commercial or institutional building, public road, stream, lake, or other public~~
25 ~~property, the department shall delete those areas from the prospecting, strip-mining, or underground mining~~
26 ~~permit application before it can be approved. Strip— or underground coal-mining may not be allowed;~~

27 ~~(a) within 300 feet of an occupied dwelling, unless waived by the owner;~~

28 ~~(b) within 300 feet of any public building, school, church, community, or institutional building, or public~~

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1 ~~park;~~

2 ~~(c) within 100 feet of a cemetery;~~

3 ~~(d) within 100 feet of the outside right-of-way line of any public road, except where mine access roads~~
4 ~~or haulage roads join the right-of-way line. The department may permit the roads to be relocated or the area~~
5 ~~affected to lie within 100 feet of the road if, after public notice and opportunity for public hearing in the locality, a~~
6 ~~written finding is made that the interests of the public and the landowners affected will be protected.~~

7 ~~(8) Strip-mining or underground mining may not be conducted within 500 feet of active or abandoned~~
8 ~~underground mines in order to prevent breakthroughs and to protect health or safety of miners. However, the~~
9 ~~department shall permit an operator to mine near, through, or partially through an abandoned underground~~
10 ~~mine or closer to an active underground mine if:~~

11 ~~(a) the nature, timing, and sequencing of specific strip-mine activities and specific underground-mine~~
12 ~~activities are jointly approved by the department and the regulatory authority concerned with the health and~~
13 ~~safety of underground miners; and~~

14 ~~(b) the operations will result in improved resource recovery, abatement of water pollution, or~~
15 ~~elimination of hazards to the health and safety of the public.~~

16 ~~(9) The department may not approve an application for a strip— or underground coal-mining operation~~
17 ~~if the area proposed to be mined is included:~~

18 ~~(a) within an area designated unsuitable for strip or underground coal mining; or~~

19 ~~(b) within an area under review for this designation under an administrative proceeding, unless in an~~
20 ~~area as to which an administrative proceeding has commenced pursuant to this part, the operator making the~~
21 ~~permit application demonstrates that prior to January 1, 1977, the operator made substantial legal and financial~~
22 ~~commitments in relation to the operation for which the operator is applying for a permit.~~

23 ~~(10) A permit or major permit revision for a strip— or underground coal-mining operation may not be~~
24 ~~issued unless the applicant has affirmatively demonstrated by its coal conservation plan that failure to conserve~~
25 ~~coal will not occur. The department may require the applicant to submit any information it considers necessary~~
26 ~~for review of the coal conservation plan.~~

27 ~~(11) Whenever information available to the department indicates that a strip— or underground coal-~~
28 ~~mining operation that is owned or controlled by the applicant or by any person who owns or controls the~~

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1 applicant is currently in violation of Public Law 95-87, as amended, any state law required by Public Law 95-87,
2 as amended, or any law, rule, or regulation of the United States or of any department or agency in the United
3 States pertaining to air or water environmental protection, the department may not issue a strip—or
4 underground coal mining permit or amendment, other than an incidental boundary revision, until the applicant
5 submits proof that the violation has been corrected or is in the process of being corrected to the satisfaction of
6 the administering agency.

7 (12) ~~The department may not issue a strip—or underground coal mining permit or amendment, other~~
8 ~~than an incidental boundary revision, to any applicant that it finds, after an opportunity for hearing, owns or~~
9 ~~controls any strip—or underground coal mining operation that has demonstrated a pattern of willful violations of~~
10 ~~Public Law 95-87, as amended, or any state law required by Public Law 95-87, as amended, when the nature~~
11 ~~and duration of the violations and resulting irreparable damage to the environment indicate an intent not to~~
12 ~~comply with the provisions of this part.~~

13 (13) ~~Subject to valid existing rights, no strip—or underground coal mining operations except those that~~
14 ~~existed as of August 3, 1977, may be conducted:~~

15 (a) ~~on lands within the boundaries of units of the national park system, the national wildlife refuge~~
16 ~~system, the national wilderness preservation system, the national system of trails, the wild and scenic rivers~~
17 ~~system, including study rivers designated under section 5(a) of the Wild and Scenic Rivers Act or study rivers or~~
18 ~~study river corridors established in any guidelines issued under that act, or national recreation areas designated~~
19 ~~by an act of congress; or~~

20 (b) ~~on any federal lands within national forests, subject to the exceptions and limitations of 30 CFR~~
21 ~~761.11(b) and the procedures of 30 CFR 761.13.~~

22 (14) ~~(a) A person who is listed by the department in the applicant violator system maintained by the~~
23 ~~office of surface mining reclamation and enforcement of the U.S. department of the interior pursuant to the~~
24 ~~Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201, et seq., as owning or controlling a strip-~~
25 ~~mining or underground mining operation may challenge the ownership or control listing by filing a written~~
26 ~~request with the department for review of the listing. In the request, the person must include a written~~
27 ~~explanation of the basis for the challenge and any evidence the person wishes the department to consider. The~~
28 ~~department shall provide a written response within 60 days of receipt of the request for review.~~

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1 (b) ~~Within 30 days of receipt of the response pursuant to subsection (14)(a), the person who is listed~~
2 ~~may request a hearing before the board department by submitting to the board department a written request for~~
3 ~~hearing that states the reason for the request. The contested case provisions of the Montana Administrative~~
4 ~~Procedure Act, Title 2, chapter 4, part 6, apply to the hearing."~~

6 **Section 173.** Section 82-4-231, MCA, is amended to read:

7 **"82-4-231. Submission of and action on reclamation plan.** (1) As rapidly, completely, and
8 effectively as the most modern technology and the most advanced state of the art will allow, each operator
9 granted a permit under this part shall reclaim and revegetate the land affected by the operation, except that
10 underground tunnels, shafts, or other subsurface excavations need not be revegetated. Under the provisions of
11 this part and rules adopted by the board department, an operator shall prepare and carry out a method of
12 operation, a plan of grading, backfilling, highwall reduction, subsidence stabilization, water control, and
13 topsoiling and a reclamation plan for the area of land affected by the operation. In developing a method of
14 operation and plans of grading, backfilling, highwall reduction, subsidence stabilization, water control,
15 topsoiling, and reclamation, all measures must be taken to eliminate damages to landowners and members of
16 the public, their real and personal property, public roads, streams, and all other public property from soil
17 erosion, subsidence, landslides, water pollution, and hazards dangerous to life and property.

18 (2) The reclamation plan must set forth in detail the manner in which the applicant intends to comply
19 with 82-4-232 through 82-4-234 and this section and the steps to be taken to comply with applicable air and
20 water quality laws and rules and any applicable health and safety standards.

21 (3) The application for a permit or major revision of a permit, which must contain the reclamation plan,
22 must be submitted to the department.

23 (4) The department shall determine whether the application is administratively complete. An
24 application is administratively complete if it contains information addressing each application requirement in 82-
25 4-222 and the rules implementing that section and all information necessary to initiate processing and public
26 review. The department shall notify the applicant in writing of its determination no later than 90 days after
27 submittal of the application. If the department determines that the application is not administratively complete, it
28 shall specify in the notice those items that the application must address. The application is presumed

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1 administratively complete as to those requirements not specified in the notice.

2 (5) If the department determines that an environmental impact statement on the application is

3 required, it shall notify the applicant in writing at the same time it gives the applicant notice pursuant to

4 subsection (4).

5 (6) After the applicant receives notice that the application is administratively complete, the applicant

6 shall publish notice of filing of the application once a week for 4 consecutive weeks in a newspaper of general

7 circulation in the locality of the proposed operation. The department shall notify various local governmental

8 bodies, planning agencies, sewage and water treatment authorities, and water companies in the locality in

9 which the proposed mining will take place of the application and provide a reasonable time for them to submit

10 written comments. Any person having an interest that is or may be adversely affected or the officer or head of

11 any federal, state, or local governmental agency or authority may file written objections to the proposed initial or

12 revised application for permit or major revision within 30 days of the applicant's published notice. If written

13 objections are filed and an objector requests an informal conference, the department shall hold an informal

14 conference in the locality of the proposed operation within 30 days of receipt of the request. The department

15 shall notify the applicant and all parties to the informal conference of its decision and the reasons for its

16 decision within 60 days of the informal conference. The department may arrange with the applicant upon

17 request by any party to the administrative proceeding for access to the proposed mining area for the purpose of

18 gathering information relevant to the proceeding.

19 (7) The filing of written objections or a request for an informal conference may not preclude the

20 department from proceeding with its review of the application as specified in subsection (8).

21 (8) (a) The department shall review each administratively complete application and determine the

22 acceptability of the application. During the review, the department may propose modifications to the application

23 or delete areas from the application in accordance with the requirements of 82-4-227. A complete application is

24 considered acceptable when the application is in compliance with all of the applicable requirements of this part

25 and the regulatory program pursuant to this part.

26 (b) If the applicant significantly modifies the application after the application has been determined

27 administratively complete in accordance with subsection (4), the department shall under this section either deny

28 the application or conduct a new review, including an administrative completeness determination, public notice,

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1 and objection period.

2 (c) If an environmental impact statement is determined to be necessary prior to making a permit

3 decision, the department shall complete and publish the final environmental impact statement at least 15 days

4 prior to the date of issuance of the written findings pursuant to subsection (8)(f).

5 (d) Except as provided in 75-1-205(4) and 75-1-208(4)(b), within 120 days after it determines that an

6 application is administratively complete, the department shall notify the applicant in writing whether the

7 application is or is not acceptable. If the application is not acceptable, the department shall set forth the reasons

8 why it is not acceptable, and it may propose modifications, delete areas, or reject the entire application. All

9 items not specified as unacceptable in the department's notification are presumed to be acceptable. Except as

10 provided in 75-1-208(4)(b), if the applicant revises the application in response to a notice of unacceptability, the

11 department shall review the revised application and notify the applicant in writing within 120 days of the date of

12 receipt whether the revised application is acceptable. If the revision constitutes a significant modification under

13 subsection (8)(b), the department shall conduct a new review, beginning with an administrative completeness

14 determination.

15 (e) When the application is determined to be acceptable, the department shall publish notice of its

16 determination once a week for 2 consecutive weeks in a newspaper of general circulation in the locality of the

17 proposed operation. Any person having an interest that is or may be adversely affected may file a written

18 objection to the determination within 10 days of the department's last published notice. If a written objection is

19 filed and an objector requests an informal conference, the department shall hold an informal conference in the

20 locality of the proposed operation within 20 days of receipt of the request. The department shall notify the

21 applicant and all parties to the informal conference of its decision and the reasons for the decision within 10

22 days of the informal conference.

23 (f) Except as provided in 75-1-205(4) and 75-1-208(4)(b), the department shall prepare written

24 findings granting or denying the permit or major revision application in whole or in part not later than 45 days

25 from the date the application is determined acceptable. However, if lands subject to the federal lands program

26 are included in the application for permit or major revision, the department shall prepare and submit written

27 findings to the federal regulatory authority. If the department's decision is to grant the permit, the department

28 shall issue the permit on the date of its written finding or, if any federal concurrence is necessary, on the date

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1 when the concurrence is obtained. If the application is denied, specific reasons for the denial must be set forth
2 in the written notification to the applicant.

3 (g) If the department fails to act within the times specified in this subsection (8), it shall immediately
4 ~~notify the board~~record - notify the board in writing of its failure to comply and the reasons for the failure to
5 comply.

6 (9) The applicant, a landowner, or any person with an interest that is or may be adversely affected by
7 the department's permit decision may within 30 days of that decision submit a written notice requesting a
8 hearing. The notice must contain the grounds upon which the requester contends that the decision is in error.

9 The hearing must be started within 30 days of the request. For purposes of a hearing, the ~~board~~department
10 board or its hearings officer may order site inspections of the area pertinent to the application. The ~~board~~
11 department board shall within 20 days of the hearing notify the person who requested the hearing, by certified
12 mail, and all other persons, by regular mail, of the findings and decisions. A person who presided at the
13 informal conference may not preside at the hearing or participate in the decision.

14 (10) In addition to the method of operation, grading, backfilling, highwall reduction, subsidence
15 stabilization, water control, topsoiling, and reclamation requirements of this part and rules adopted under this
16 part, the operator, consistent with the directives of subsection (1), shall:

17 (a) bury under adequate fill all toxic materials, shale, mineral, or any other material determined by the
18 department to be acid-producing, toxic, undesirable, or creating a hazard;

19 (b) as directed by rules, seal off tunnels, shafts, or other openings or any breakthrough of water
20 creating a hazard;

21 (c) impound, drain, or treat all runoff or underground mine waters so as to reduce soil erosion,
22 damage to grazing and agricultural lands, and pollution of surface and subsurface waters;

23 (d) remove or bury all metal, lumber, and other refuse resulting from the operation;

24 (e) use explosives in connection with the operation *only in accordance with department regulations*
25 designed to minimize noise, damage to adjacent lands, and water pollution and ensure public safety and for
26 other purposes;

27 (f) adopt measures to prevent land subsidence unless the department approves a plan for inducing
28 subsidence into an abandoned operation in a predictable and controlled manner, with measures for grading,

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1 topsoiling, and revegetating the subsided land surface. In order for a controlled subsidence plan to be
2 approved, the applicant is required to show that subsidence will not cause a direct or indirect hazard to any
3 public or private buildings, roads, facilities, or use areas, constitute a hazard to human life or health or to
4 domestic livestock or a viable agricultural operation, or violate any other restrictions the department may
5 consider necessary.

6 (g) stockpile and protect from erosion all mining and processing wastes until these wastes can be
7 disposed of according to the provisions of this part;

8 (h) deposit as much stockpiled waste material as possible back into the mine voids upon
9 abandonment in a manner that will prevent or minimize land subsidence. The remaining waste material must be
10 disposed of as provided by this part and the rules of the ~~board~~ department.

11 (i) seal all portals, entryways, drifts, shafts, or other openings between the surface and underground
12 mine workings when no longer needed;

13 (j) to the extent possible using the best technology currently available, minimize disturbances and
14 adverse impacts of the operation on fish, wildlife, and related environmental values and achieve enhancement
15 of those resources when practicable;

16 (k) minimize the disturbances to the prevailing hydrologic balance at the mine site and in adjacent
17 areas and to the quality and quantity of water in surface water and ground water systems both during and after
18 strip- or underground-coal-mining operations and during reclamation by:

19 (i) avoiding acid or other toxic mine drainage by measures including but not limited to:

20 (A) preventing or removing water from contact with toxic-producing deposits;

21 (B) treating drainage to reduce toxic content that adversely affects downstream water upon being
22 released to watercourses;

23 (C) casing, sealing, or otherwise managing boreholes, shafts, and wells and keeping acid or other
24 toxic drainage from entering ground and surface waters;

25 (ii) (A) conducting strip- or underground-mining operations so as to prevent, to the extent possible
26 using the best technology currently available, additional contributions of suspended solids to streamflow or
27 runoff outside the permit area, but the contributions may not be in excess of requirements set by applicable
28 state or federal law;

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- 1 (B) constructing any siltation structures pursuant to subsection (10)(k)(ii)(A) prior to commencement
2 of strip- or underground-mining operations, with the structures to be certified by a qualified registered engineer
3 and to be constructed as designed and as approved in the reclamation plan;
- 4 (iii) cleaning out and removing temporary or large settling ponds or other siltation structures from
5 drainways after disturbed areas are revegetated and stabilized and depositing the silt and debris at a site and in
6 a manner approved by the department;
- 7 (iv) restoring recharge capacity of the mined area to approximate premining conditions;
- 8 (v) avoiding channel deepening or enlargement in operations that requires the discharge of water
9 from mines;
- 10 (vi) preserving throughout the mining and reclamation process the essential hydrologic functions of
11 alluvial valley floors in the arid and semiarid areas of the country;
- 12 (vii) designing and constructing reclaimed channels of intermittent streams and perennial streams to
13 ensure long-term stability; and
- 14 (viii) any other actions that the department may prescribe;
- 15 (l) conduct strip- or underground-mine operations in accordance with the approved coal conservation
16 plan;
- 17 (m) stabilize and protect all surface areas, including spoil piles, to effectively control air pollution;
- 18 (n) seal all auger holes with an impervious and noncombustible material in order to prevent drainage
19 except when the department determines that the resulting impoundment of water in the auger holes may create
20 a hazard to the environment or the public health and safety;
- 21 (o) develop contingency plans to prevent sustained combustion;
- 22 (p) refrain from construction of roads or other access ways up a streambed or drainage channel or in
23 proximity to the channel so as to seriously alter the normal flow of water;
- 24 (q) meet other criteria that are necessary to achieve reclamation in accordance with the purposes of
25 this part, taking into consideration the physical, climatological, and other characteristics of the site;
- 26 (r) with regard to underground mines, eliminate fire hazards and otherwise eliminate conditions that
27 constitute a hazard to health and safety of the public;
- 28 (s) locate openings for all new drift mines working acid-producing or iron-producing coal seams in a

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- 1 manner that prevents a gravity discharge of water from the mine.
- 2 (11) An operator may not throw, dump, pile, or permit the throwing, dumping, or piling or otherwise
3 placing of any overburden, stones, rocks, mineral, earth, soil, dirt, debris, trees, wood, logs, or any other
4 materials or substances of any kind or nature beyond or outside of the area of land that is under permit and for
5 which a bond has been posted under 82-4-223 or place the materials described in this section in a way that
6 normal erosion or slides brought about by natural physical causes will permit the materials to go beyond or
7 outside of that area of land. An operator shall conduct the strip- or underground-mining operation in a manner
8 that protects areas outside the permit area."
- 9
- 10 **Section 174.** Section 82-4-232, MCA, is amended to read:
- 11 **"82-4-232. Area mining required -- bond -- alternative plan.** (1) (a) Area strip mining, a method of
12 operation that does not produce a bench or fill bench, is required where strip mining is proposed. The area of
13 land affected must be backfilled and graded to the approximate original contour of the land. However:
- 14 (i) consistent with the adjacent unmined landscape elements, the operator may propose and the
15 department may approve regraded topography gentler than premining topography in order to enhance the
16 postmining land use and develop a postmining landscape that will provide greater moisture retention, greater
17 stability, and reduced soil losses from runoff and erosion;
- 18 (ii) postmining slopes may not exceed the angle of repose or lesser slope as is necessary to achieve a
19 long-term static safety factor of 1.3 or greater and to prevent slides;
- 20 (iii) permanent impoundments may be approved if they are suitable for the postmining land use and
21 otherwise meet the requirements of this part, as provided by ~~beard-department~~ rules; and
- 22 (iv) reclaimed topography must be suitable for the approved postmining land use.
- 23 (b) Spoil from the first cut is not required to be transported to the last cut if highwalls are eliminated,
24 box cut spoils are graded to blend in with the surrounding terrain, and the approximate original contour of the
25 land is achieved.
- 26 (c) When directed by the department, the operator shall construct in the final grading diversion
27 ditches, depressions, or terraces that will accumulate or control the water runoff.
- 28 (2) In addition to the backfilling and grading requirements, the operator's method of operation on

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1 steep slopes may be regulated and controlled according to rules adopted by the ~~board~~ department. These rules
2 may require any measure to accomplish the purpose of this part.

3 (3) For coal mining on prime farmlands, the ~~board~~ department shall establish by rule specifications for
4 soil removal, storage, replacement, and reconstruction, and the operator must as a minimum be required to:

5 (a) (i) segregate the A horizon of the natural soil, except when it can be shown that other available
6 soil materials will create a final soil having a greater productive capacity; and

7 (ii) if not used immediately, stockpile this material separately from other spoil and provide needed
8 protection from wind and water erosion or contamination by other acid or toxic material;

9 (b) (i) segregate the B horizon of the natural soil, or underlying C horizon or other strata, or a
10 combination of the horizons or other strata that are shown to be both texturally and chemically suitable for plant
11 growth and that can be shown to be equally or more favorable for plant growth than the B horizon in sufficient
12 quantities to create in the regraded final soil a root zone of comparable depth and quality to that that existed in
13 the natural soil; and

14 (ii) if not used immediately, stockpile this material separately from other spoil and provide needed
15 protection from wind and water erosion or contamination by acid or toxic material;

16 (c) replace and regrade the root zone material described in subsection (3)(b) with proper compaction
17 and uniform depth over the regraded spoil material; and

18 (d) redistribute and grade in a uniform manner the surface soil horizon described in subsection (3)(a).

19 (4) All available topsoil must be removed in a separate layer, guarded from erosion and pollution, and
20 kept in a condition so that it can sustain vegetation of at least the quality and variety it sustained prior to
21 removal. However, the operator shall accord substantially the same treatment to any subsurface deposit of
22 material that is capable, as determined by the department, of supporting surface vegetation virtually as well as
23 the present topsoil. After the operation has been backfilled and graded, the topsoil or the best available
24 subsurface deposit of material that is best able to support vegetation must be returned as the top layer.

25 (5) As determined by rules of the ~~board~~ department, time limits must be established requiring
26 backfilling, grading, subsidence stabilization, water control, highwall reduction, topsoiling, planting, and
27 revegetation to be kept current. All backfilling, subsidence stabilization, sealing, grading, and topsoiling must be
28 completed before necessary equipment is moved from the operation.

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1 (6) (a) The permittee may file an application with the department for the release of all or part of a
2 performance bond. The application must contain a proposed public notice of the precise location of the land
3 affected, the number of acres for which bond release is sought, the permit and the date approved, the amount
4 of the bond filed and the portion sought to be released, the type and appropriate dates of reclamation work
5 performed, and a description of the results achieved as they relate to the permittee's approved reclamation
6 plan. In addition, as part of any bond release application, the permittee shall submit copies of letters that the
7 permittee has sent to adjoining property owners, local governmental bodies, planning agencies, and sewage
8 and water treatment authorities or water companies in the locality of the operation, notifying them of the
9 permittee's intention to seek release from the bond.

10 (b) The department shall determine whether the application is administratively complete. An
11 application is administratively complete if it includes:

12 (i) the location and acreage of the land for which bond release is sought;

13 (ii) the amount of bond release sought;

14 (iii) a description of the completed reclamation, including the date of performance;

15 (iv) a discussion of how the results of the completed reclamation satisfy the requirements of the
16 approved reclamation plan; and

17 (v) information required by rules implementing this part.

18 (c) The department shall notify the applicant in writing of its determination no later than 60 days after
19 submittal of the application. If the department determines that the application is not administratively complete, it
20 shall specify in the notice those items that the application must address. After an application for bond release
21 has been determined to be administratively complete by the department, the permittee shall publish a public
22 notice that has been approved as to form and content by the department at least once a week for 4 successive
23 weeks in a newspaper of general circulation in the locality of the mining operation.

24 (d) Any person with a valid legal interest that might be adversely affected by the release of a bond or
25 the responsible officer or head of any federal, state, or local governmental agency that has jurisdiction by law or
26 special expertise with respect to any environmental, social, or economic impact involved in the operation or is
27 authorized to develop and enforce environmental standards with respect to the operation may file written
28 objections to the proposed release of bond to the department within 30 days after the last publication of the

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1 notice. If written objections are filed and a hearing is requested, the department shall hold a public hearing in
2 the locality of the operation proposed for bond release or in Helena, at the option of the objector, within 30 days
3 of the request for hearing. The department shall inform the interested parties of the time and place of the
4 hearing. The date, time, and location of the public hearing must be advertised by the department in a
5 newspaper of general circulation in the locality for 2 consecutive weeks. Within 30 days after the hearing, the
6 department shall notify the permittee and the objector of its final decision.

7 (e) Without prejudice to the rights of the objector or the permittee or the responsibilities of the
8 department pursuant to this section, the department may establish an informal conference to resolve written
9 objections.

10 (f) For the purpose of the hearing under subsection (6)(d), the department may administer oaths,
11 subpoena witnesses or written or printed materials, compel the attendance of witnesses or the production of
12 materials, and take evidence, including but not limited to conducting inspections of the land affected and other
13 operations carried on by the permittee in the general vicinity. A verbatim record of each public hearing required
14 by this section must be made, and a transcript must be made available on the motion of any party or by order of
15 the department.

16 (g) If the applicant significantly modifies the application after the application has been determined to
17 be administratively complete, the department shall conduct a new review, including an administrative
18 completeness determination. A significant modification includes but is not limited to:

19 (i) the notification of an additional property owner, local governmental body, planning agency, or
20 sewage and water treatment authority of the permittee's intention to seek a bond release;

21 (ii) a material increase in the acreage for which a bond release is sought or in the amount of bond
22 release sought; or

23 (iii) a material change in the reclamation for which a bond release is sought or the information used to
24 evaluate the results of that reclamation.

25 (h) The department shall, within 30 days of determining that the application is administratively
26 complete or as soon as weather permits, conduct an inspection and evaluation of the reclamation work
27 involved. In the evaluation, the department shall consider, among other things, the degree of difficulty in
28 completing any remaining reclamation, whether pollution of surface and subsurface water is occurring, the

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1 probability of continuance or future occurrence of the pollution, and the estimated cost of abating the pollution.

2 (i) The department shall review each administratively complete application to determine the
3 acceptability of the application. A complete application is acceptable if the application is in compliance with all
4 of the applicable requirements of this part, the rules adopted under this part, and the permit.

5 (j) (i) The department shall notify the applicant in writing regarding the acceptability of the application
6 no later than 60 days from the date of the inspection.

7 (ii) If the department determines that the application is not acceptable, it shall specify in the notice
8 those items that the application must address.

9 (iii) If the applicant revises the application in response to a notice of unacceptability, the department
10 shall review the revised application and notify the applicant in writing within 60 days of the date of receipt as to
11 whether the revised application is acceptable.

12 (iv) If the revision constitutes a significant modification, the department shall conduct a new review,
13 beginning with an administrative completeness determination.

14 (v) A significant modification includes but is not limited to:

15 (A) the notification of an additional property owner, local governmental body, planning agency, or
16 sewage and water treatment authority of the permittee's intention to seek a bond release;

17 (B) a material increase in the acreage for which a bond release is sought or the amount of bond
18 release sought; or

19 (C) a material change in the reclamation for which a bond release is sought or the information used to
20 evaluate the results of that reclamation.

21 (k) The department shall release the bond in whole or in part if it is satisfied the reclamation covered
22 by the bond or portion of the bond has been accomplished as required by this part according to the following
23 schedule:

24 (i) When the permittee completes the plugging, backfilling, regrading, and drainage control of a
25 bonded area in accordance with the approved reclamation plan, the department shall release 60% of the bond
26 or collateral for the applicable permit area.

27 (ii) After revegetation has been established on the regraded lands in accordance with the approved
28 reclamation plan, the department shall, for the period specified for operator responsibility of reestablishing

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1 revegetation, retain that amount of bond for the revegetated area that would be sufficient for a third party to
2 cover the cost of reestablishing revegetation. Whenever a silt dam is to be retained as a permanent
3 impoundment, the portion of bond may be released under this subsection (6)(k)(ii) if provisions for sound future
4 maintenance by the operator or the landowner have been made with the department. Any part of the bond may
5 not be released under this subsection (6)(k)(ii):

6 (A) as long as the lands to which the release would be applicable are contributing suspended solids to
7 streamflow or runoff outside the permit area in excess of the requirements of 82-4-231(10)(k); or

8 (B) before soil productivity for prime farm lands to which the release would be applicable has returned
9 to equivalent levels of yield as nonmined land of the same soil type in the surrounding area under equivalent
10 management practices, as determined from the soil survey.

11 (iii) When the permittee has successfully completed all prospecting, mining, and reclamation activities,
12 the department shall release the remaining portion of the bond, but not before the expiration of the period
13 specified for responsibility and not until all reclamation requirements of this part are fully met.

14 (l) If the department disapproves the application for release of the bond or a portion of the bond, it
15 shall:

16 (i) provide to the permittee detailed written findings demonstrating that the reclamation covered by the
17 bond or a portion of the bond has not been accomplished as required by this part; and

18 (ii) recommend corrective actions necessary to secure the release and allowing opportunity for a public
19 hearing.

20 (m) When an application for total or partial bond release is filed with the department, it shall notify the
21 municipality or county in which a prospecting or mining operation is located by certified mail at least 30 days
22 prior to the release of all or a portion of the bond.

23 (7) All disturbed areas must be reclaimed in a timely manner to conditions that are capable of
24 supporting the land uses that they were capable of supporting prior to any mining or to higher or better uses as
25 approved pursuant to subsection (8).

26 (8) (a) An operator may propose a higher or better use as an alternative postmining land use. If the
27 landowner is not the operator, the operator shall submit written documentation of the concurrence of the
28 landowner or the land management agency with jurisdiction over the land. The department may approve the

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1 proposed alternative postmining land use only if it meets all of the following criteria:

2 (i) There is a reasonable likelihood for achievement of the alternative land use.

3 (ii) The alternative land use does not present any actual or probable hazard to the public health or
4 safety or any threat of water diminution or pollution.

5 (iii) The alternative land use will not:

6 (A) be impractical or unreasonable;

7 (B) be inconsistent with applicable land use policies or plans;

8 (C) involve unreasonable delay in implementation; or

9 (D) cause or contribute to violation of federal, state, or local law.

10 (b) As used in this section, the term "landowner" includes a person who has sold the surface estate to
11 the operator with an option to repurchase the surface estate after mining and reclamation are complete.

12 (9) The reclamation plan must incorporate appropriate wildlife habitat enhancement features that are
13 integrated with cropland, grazing land, pastureland, land occasionally cut for hay, or other uses in order to
14 enhance habitat diversity, with emphasis on big game animals, game birds, and threatened and endangered
15 species that have been documented to live in the area of land affected, and to enhance wetlands and riparian
16 areas along rivers and streams and bordering ponds and lakes. Incorporation of wildlife habitat enhancement
17 features does not constitute a change in land use to fish and wildlife habitat and may not interfere with the
18 designated land use.

19 (10) Facilities existing prior to mining, including but not limited to public roads, utility lines, railroads, or
20 pipelines, may be replaced as part of the reclamation plan."

21

22 **Section 175.** Section 82-4-234, MCA, is amended to read:

23 **"82-4-234. Commencement of reclamation.** The operator shall commence the reclamation of the
24 area of land affected by the operator's operation as soon as possible after the beginning of strip mining or
25 underground mining of that area in accordance with plans previously approved by the department. Those
26 grading, backfilling, subsidence stabilization, topsoiling, and water management practices that are approved in
27 the plans must be kept current with the operation as defined by rules of the board department, and a permit or
28 supplement to a permit may not be issued if, in the discretion of the department, these practices are not

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1 current."

2

3 **Section 176.** Section 82-4-235, MCA, is amended to read:

4 **"82-4-235. Determination of successful revegetation – final bond release.** (1) Success of
5 revegetation must be judged on the effectiveness of the vegetation for the approved postmining land use, the
6 extent of cover compared to the cover occurring in the natural vegetation, and the requirements of 82-4-233.
7 Standards for success are:

8 (a) for areas reclaimed for use as cropland, crop production must be at least equal to that achieved
9 prior to mining based on comparison with historical data, comparable reference areas, or United States
10 department of agriculture publications applicable to the area of the operation, as referenced in rules adopted by
11 the board department;

12 (b) for areas reclaimed for use as pastureland or grazing land, the ground cover and production of
13 living plants on the revegetated area must be at least equal to that of a reference area or other standard
14 approved by the department as appropriate for the postmining land use;

15 (c) for areas reclaimed for use as fish and wildlife habitat, forestry, or recreation, success of
16 revegetation must be determined on the basis of approved tree density standards or shrub density standards,
17 or both, and vegetative ground cover required to achieve the postmining land use;

18 (d) reestablished vegetation is considered effective if the postmining land use is achieved and erosion
19 is controlled;

20 (e) reestablished vegetation is considered permanent if it is diverse and effective at the end of the 10-
21 year responsibility period specified under subsection (2); and

22 (f) plant species composing the reestablished vegetation are considered to have the same seasonal
23 characteristics of growth as the original vegetation, to be capable of regeneration and plant succession, and to
24 be compatible with the plant and animal species of the area if those plant species are native to the area or are
25 introduced species approved by the department as desirable and necessary to achieve the postmining land
26 use.

27 (2) Inspection and evaluation of reclaimed vegetative cover must be made as soon as possible
28 following an application for final bond release to determine if a satisfactory stand has been established. If the

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1 department determines that a satisfactory vegetative cover has been established, it shall release the remaining
2 bond held on the area reclaimed after public notice and an opportunity for hearing as provided in 82-4-232(6).
3 Except as provided in subsection (3), the remaining bond may not be released prior to a period of 10 years after
4 the last year of augmented seeding, fertilizing, irrigation, or other work required under this part for those
5 operations or portions of operations that were seeded after May 2, 1978, or prior to a period of 5 years after
6 initial planting for all exploration activities and all other operations.

7 (3) (a) Vegetative cover of water management facilities and other support facilities composing no
8 more than 10% of the area for which bond release is sought is not subject to the 10-year responsibility period.
9 Water management facilities and other support facilities include sedimentation ponds, diversions, other water
10 management structures, soils stockpiles, and access roads.

11 (b) Vegetative cover of water management facilities and other support facilities composing no more
12 than 10% of the area for which bond release is sought is eligible for bond release if the vegetative cover
13 otherwise meets the reclamation standards in subsection (1).

14 (4) (a) Notwithstanding the provisions of subsections (2) and (3), on land from which coal was
15 removed prior to May 3, 1978, and on land from which coal was not removed and that was not used, disturbed,
16 or redisturbed in connection with this part after May 2, 1978, pursuant to a permit issued by the department
17 under this part, the department may approve for release a bond on an area of reclaimed vegetation that meets
18 the following criteria:

19 (i) it was seeded using a seed mixture that was approved by the department under the criteria
20 established pursuant to 82-4-233 and that included introduced species; and

21 (ii) at least one of the following conditions exists:

22 (A) the standards of 82-4-233(1) are otherwise achieved;

23 (B) the operator has demonstrated substantial usefulness of the reclaimed vegetation for grazing of
24 livestock;

25 (C) the operator demonstrates that the reclaimed vegetation has substantial value as a habitat
26 component for wildlife present in the area; or

27 (D) the topography and soils are suitable for conversion to cropland or hayland consistent with the
28 standards of 82-4-232 and the department approves and the operator completes that conversion.

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(b) On lands that meet the criteria described in subsection (4)(a), interseeding or supplemental planting may be performed without reinitiating the liability period provided in subsection (2)."

Section 177. Section 82-4-239, MCA, is amended to read:

"82-4-239. Reclamation. (1) The department may have reclamation work done by its employees, by employees of other governmental agencies, by soil conservation districts, or through contracts with qualified persons. The ~~beard-department~~ may construct, operate, and maintain plants for the control and treatment of water pollution resulting from mine drainage.

(2) Any funds or any public works programs available to the department must be used and expended to reclaim and rehabilitate lands that have been subjected to strip mining or underground mining and that have not been reclaimed and rehabilitated in accordance with the standards of this part. The department shall cooperate with federal, state, and private agencies to engage in cooperative projects under this section.

(3) Agents, employees, or contractors of the department may enter upon any land for the purpose of conducting studies or exploratory work to determine whether the land has been strip- or underground-mined and not reclaimed and rehabilitated in accordance with the requirements of this part and to determine the feasibility of restoration, reclamation, abatement, control, or prevention of any adverse effects of past coal-mining practices. Upon request of the director of the department, the attorney general shall bring an injunctive action to restrain any interference with the exercise of the right to enter and inspect granted in this subsection. The action must be brought in the county in which the mine is located.

(4) (a) The department shall take the actions described in subsection (4)(b) when it makes a finding of fact that:

- (i) land or water resources have been adversely affected by past coal-mining practices;
- (ii) the adverse effects are at a stage at which, in the public interest, action to restore, reclaim, abate, control, or prevent should be taken; and
- (iii) the owners of the land or water resources where entry must be made to restore, reclaim, abate, control, or prevent the adverse effects of past coal-mining practices are not known or readily available or the owners will not give permission for the department or its agents, employees, or contractors to enter upon the property to restore, reclaim, abate, control, or prevent the adverse effects of past coal-mining practices.

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(b) After giving notice by mail to the owner, if known, and any purchaser under contract for deed, if known, or, if neither is known, by posting notice on the premises and advertising in a newspaper of general circulation in the county in which the land lies, the agents, employees, or contractors of the department may enter on the property adversely affected by past coal-mining practices and on any other property necessary for access to the mineral property to do all things necessary or expedient to restore, reclaim, abate, control, or prevent the adverse effects of past coal-mining practices.

(c) Action taken under subsection (4)(b) is not an act of condemnation of property or of trespass, but rather is an exercise of the power granted by Article IX, sections 1 and 2, of the Montana constitution.

(5) (a) Within 6 months after the completion of projects to restore, reclaim, abate, control, or prevent adverse effects of past coal-mining practices on privately owned land, the department shall itemize the money expended and may file a statement of those expenses in the office of the clerk and recorder of the county in which the land lies, together with a notarized appraisal by an independent appraiser of the value of the land before the restoration, reclamation, abatement, control, or prevention of adverse effects of past coal-mining practices if the money expended resulted in a significant increase in property value. The statement constitutes a lien upon the land. The lien may not exceed the amount determined by the appraisal to be the increase in the market value of the land as a result of the restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal-mining practices. A lien under this subsection (5)(a) may not be filed against the property of a person who owned the surface prior to May 2, 1977, and who did not consent to, participate in, or exercise control over the mining operation that necessitated the reclamation performed under this part.

(b) The landowner may petition within 60 days of the filing of the lien to determine the increase in the market value of the land as a result of the restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal-mining practices. The amount reported to be the increase in value of the premises constitutes the amount of the lien and must be recorded with the statement provided for in this section. Any party aggrieved by the decision may appeal as provided by law.

(c) The lien provided in this section must be recorded at the office of the county clerk and recorder. The statement constitutes a lien upon the land as of the date of the expenditure of the money and has priority as a lien second only to the lien of real estate taxes imposed upon the land.

(6) The department may acquire the necessary property by gift or purchase. A gift or purchase must

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1 be approved by the board of land commissioners. If the property cannot be acquired by gift or purchase at a
2 reasonable cost, proceedings may be instituted in the manner provided in Title 70, chapter 30, against all
3 nonaccepting landholders if:
4 (a) the property is necessary for successful reclamation;
5 (b) the acquired land after restoration, reclamation, abatement, control, or prevention of the adverse
6 effects of past coal-mining practices will serve recreation and historic purposes or conservation and reclamation
7 purposes or provide open space benefits; and
8 (c) (i) permanent facilities, such as treatment plants or relocated stream channels, will be constructed
9 on the land for the restoration, reclamation, abatement, control, or prevention of the adverse effects of past
10 strip- or underground-coal-mining practices; or
11 (ii) acquisition of coal refuse disposal sites and all coal refuse on the land will serve the purposes of
12 this part because public ownership is desirable to meet emergency situations and prevent recurrences of the
13 adverse effects of past coal-mining practices."

14
15 **Section 178.** ~~Section 82-4-251, MCA, is amended to read:~~

16 ~~"82-4-251.—Noncompliance—suspension of permits.—(1) If it is determined on the basis of an~~
17 ~~inspection that the permittee is or that any condition or practice exists in violation of any requirement of this part~~
18 ~~or any permit condition required by this part that creates an imminent danger to the health or safety of the~~
19 ~~public or is causing or can reasonably be expected to cause significant and imminent environmental harm to~~
20 ~~land, air, or water resources, the director of the department or an authorized representative shall immediately~~
21 ~~order cessation of the operation or the portion of the operation relevant to the condition, practice, or violation.~~
22 ~~The cessation order remains in effect until the director or an authorized representative determines that the~~
23 ~~condition, practice, or violation has been abated or until modified, vacated, or terminated by the director or an~~
24 ~~authorized representative pursuant to subsection (5). If the director or an authorized representative finds that~~
25 ~~the ordered cessation of the operation or any portion of the operation will not completely abate the imminent~~
26 ~~danger to the health or safety of the public or the significant and imminent environmental harm to land, air, or~~
27 ~~water resources, the director or the authorized representative shall, in addition to the cessation order, impose~~
28 ~~affirmative obligations requiring any steps that the director or the authorized representative considers~~

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1 ~~necessary to abate the imminent danger or the significant environmental harm.~~
2 ~~(2)—When, on the basis of an inspection, the department determines that any permittee is in violation~~
3 ~~of any requirement of this part or any permit condition required by this part that does not create an imminent~~
4 ~~danger to the health or safety of the public or cannot be reasonably expected to cause significant and imminent~~
5 ~~environmental harm to land, air, or water resources, the director or an authorized representative shall issue a~~
6 ~~notice to the permittee or the permittee's agent fixing a reasonable time, not exceeding 90 days, for the~~
7 ~~abatement of the violation and providing opportunity for public hearing. If, upon expiration of the period of time~~
8 ~~as originally fixed or subsequently extended, for good cause shown and upon the written finding of the director~~
9 ~~or an authorized representative, the director or an authorized representative finds that the violation has not~~
10 ~~been abated, the director or an authorized representative shall immediately order a cessation of the operation~~
11 ~~or the portion of the operation relevant to the violation. The cessation order remains in effect until the director or~~
12 ~~an authorized representative determines that the violation has been abated or until modified, vacated, or~~
13 ~~terminated by the director or an authorized representative pursuant to subsection (5). In the order of cessation~~
14 ~~issued under this subsection, the director shall determine the steps necessary to abate the violation in the most~~
15 ~~expeditious manner possible and shall include the necessary measures in the order.~~
16 ~~(3)—When, on the basis of an inspection, the director or an authorized representative determines that a~~
17 ~~pattern of violations of any requirements of this part or any permit conditions required by this part exists or has~~
18 ~~existed and if the director or an authorized representative also finds that the violations are caused by the~~
19 ~~unwarranted failure of the permittee to comply with any requirements of this part or any permit conditions or that~~
20 ~~the violations are willfully caused by the permittee, the director or an authorized representative shall issue an~~
21 ~~order to the permittee to show cause as to why the permit should not be suspended or revoked and shall~~
22 ~~provide opportunity for a public hearing. If a hearing is requested, the director shall inform all interested parties~~
23 ~~of the time and place of the hearing. Upon the permittee's failure to show cause as to why the permit should not~~
24 ~~be suspended or revoked, the director or an authorized representative shall suspend or revoke the permit. A~~
25 ~~permittee may request a contested case hearing on a permit suspension or revocation by filing a request for~~
26 ~~hearing, specifying the grounds for the request, within 30 days of receipt of the order of suspension or~~
27 ~~revocation. The order is effective upon expiration of the period for requesting a hearing or, if a hearing is~~
28 ~~requested, upon issuance of a final order by the board department. The hearing must be conducted in~~

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1 accordance with the requirements of Title 2, chapter 4, part 6. When a permit has been revoked, the
2 department may order the performance bond forfeited.
3 (4)—Any additional permits held by an operator whose mining permit has been revoked must be
4 suspended, and the operator is not eligible to receive another permit or to have the suspended permits
5 reinstated until the operator has complied with all the requirements of this part with respect to former permits
6 issued to the operator. An operator who has forfeited a bond is not eligible to receive another permit unless the
7 land for which the bond was forfeited has been reclaimed without cost to the state or the operator has paid into
8 the reclamation account a sum together with the value of the bond the department finds adequate to reclaim the
9 lands.
10 (5)—Notices and orders issued pursuant to this section must set forth with reasonable specificity the
11 nature of the violation and the remedial action required, the period of time established for abatement, and a
12 reasonable description of the portion of the operation to which the notice or order applies. Each notice or order
13 issued under this section must be given promptly to the permittee or the permittee's agent by the department,
14 by the director, or by the authorized representative who issued the notice or order. All notices and orders must
15 be in writing and be signed by the authorized representatives. Any notice or order issued pursuant to this
16 section may be modified, vacated, or terminated by the director or an authorized representative. However, any
17 notice or order issued pursuant to this section that requires cessation of mining by the operator expires within
18 30 days of actual notice to the operator unless an informal public hearing, if requested by the person to whom
19 the notice or order was issued, is held at the site or within such reasonable proximity to the site that any
20 viewings of the site can be conducted during the course of the hearing. If the department receives a request for
21 an informal public hearing 21 days after service of the notice or order, the period for holding the informal public
22 hearing is extended by the number of days after the 21st day that the request was received.
23 (6)—A person who has been issued a notice or an order of cessation pursuant to subsection (1) or (2)
24 or a person who has an interest that is or may be adversely affected by an order issued pursuant to subsection
25 (1) or (2) or by modification, vacation, or termination of that order may request a hearing before the board
26 department on that order within 30 days of its issuance or within 30 days of its modification, vacation, or
27 termination. The filing of an application for review under this subsection may not operate as a stay of any order
28 or notice. The board department shall make findings of fact and issue a written decision incorporating an order

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1 vacating, affirming, modifying, or terminating the order.
2 (7)—Whenever an order is issued under this section or as the result of any administrative proceeding
3 under this part, at the request of any person, a sum equal to the aggregate amount of all costs, expenses, and
4 attorney fees as determined by the department to have been reasonably incurred by the person for or in
5 connection with the person's participation in the proceedings, including any judicial review of agency actions,
6 may be assessed against either party as the court, resulting from judicial review, or the department, resulting
7 from administrative proceedings, considers proper.
8 (8)—In order to protect the stability of the land, the director or an authorized representative shall order
9 cessation of underground coal mining under urbanized areas, cities, towns, and communities and adjacent to
10 industrial or commercial buildings, major impoundments, or permanent streams if the director or the authorized
11 agent finds imminent danger to inhabitants of the urbanized areas, cities, towns, and communities."
12
13 **Section 179.** Section 82-4-254, MCA, is amended to read:
14 **"82-4-254. Violation -- penalty -- waiver.** (1) (a) Except as provided in subsection (2), a person or
15 operator who violates any of the provisions of this part, rules adopted or orders issued under this part, or term
16 or condition of a permit and any director, officer, or agent of a corporation who purposely or knowingly
17 authorizes, orders, or carries out a violation shall pay an administrative penalty of not less than \$100 or more
18 than \$5,000 for the violation and an additional administrative penalty of not less than \$100 or more than \$5,000
19 for each day during which a violation continues and may be enjoined from continuing the violations as provided
20 in this section. A person or operator who fails to correct a violation within the period permitted by law, rule of the
21 board, or order of the department must be assessed a penalty of not less than \$750 for each day, up to 30
22 days, during which the failure or violation continues.
23 (b) Penalties assessed under this section must be determined in accordance with the penalty factors
24 in 82-4-1001.
25 (c) The period permitted for correction of a violation does not, in the case of any review proceeding
26 under 82-4-251(6), end until entry of a final order suspending the abatement requirements or until entry of an
27 order of court ordering suspension of the abatement requirements. If the failure to abate continues for more
28 than 30 days, the department shall, within 30 days after the 30-day period, take appropriate action pursuant to

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1 82-4-251(3) or request action under subsection (4) or (6) of this section.

2 (2) The department may waive the penalty for a minor violation of this part, a rule adopted or an order
3 issued under this part, or a term or condition of a permit if the department determines that the violation is not of
4 potential harm to public health, public safety, or the environment and does not impair the administration of this
5 part. The department may not waive a penalty assessed under this section if the person or operator fails to
6 abate the violation as directed under 82-4-251. The ~~board-department~~ shall adopt rules to implement and
7 administer a procedure for waiver of a penalty under this subsection.

8 (3) (a) To assess an administrative penalty under this section, the department shall issue a notice of
9 violation and penalty order to the person or operator, unless the penalty is waived pursuant to subsection (2).
10 The notice and order must specify the provision of this part, rule adopted or order issued under this part, or
11 term or condition of a permit that is violated and must contain findings of fact, conclusions of law, and a
12 statement of the proposed administrative penalty. The notice and order must be served personally or by
13 certified mail. Service by mail is complete 3 business days after the date of mailing. The notice and order
14 become final unless, within 30 days after the order is served, the person or operator to whom the order was
15 issued requests a hearing before the ~~board-department board~~. By submitting to the ~~board-department~~ a written
16 request within 30 days of service of the notice of violation, stating the reason for the request, the person or
17 operator is entitled to a hearing before the ~~board-department board~~ under 82-4-206 on the issues of whether
18 the alleged violation has occurred and whether the penalty proposed to be assessed is proper. On receipt of a
19 request, the ~~board-department board~~ shall schedule a hearing. After a hearing, the ~~board-department board~~
20 shall make findings of fact and issue a written decision as to the occurrence of the violation and the amount of
21 penalty warranted. If the ~~board-department board~~ finds that the violation occurred and a penalty is warranted, it
22 shall order the payment of the penalty. If the time for requesting a hearing expires without a hearing request,
23 the person or operator shall remit the amount of the penalty within 30 days of the expiration of the period for
24 requesting a hearing.

25 (b) If the person or operator to whom a final order is issued under subsection (3)(a) wishes to obtain
26 judicial review of the order, the person or operator shall submit with any assessed penalty a statement that the
27 penalty is being paid under protest and the department shall hold the payment in escrow until judicial review is
28 complete. Any person or operator who fails to request and submit testimony at the hearing provided for in

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1 subsection (3)(a) or who fails to pay any assessed penalty under protest within 30 days of the order assessing
2 the penalty forfeits the right to seek judicial review of the violation and penalty determinations.

3 (c) Penalties provided for in this section are recoverable in an action brought by the department. The
4 action must be filed in the district court of the first judicial district, Lewis and Clark County, if mutually agreed on
5 by the parties in the action, or in the district court having jurisdiction over the defendant.

6 (4) The department may bring an action for a restraining order or temporary or permanent injunction
7 against an operator or other person who:

8 (a) violates, threatens to violate, or fails or refuses to comply with any order or decision issued under
9 this part;

10 (b) interferes with, hinders, or delays the department in carrying out the provisions of this part;

11 (c) refuses to admit an authorized representative of the department to the permit area;

12 (d) refuses to permit inspection of the permit area by an authorized representative of the department;

13 (e) refuses to furnish any information or report requested by the department in furtherance of the
14 provisions of this part; or

15 (f) refuses to permit access to and copying of records that the department determines to be
16 necessary in carrying out the provisions of this part.

17 (5) Any relief granted by a court under subsection (4)(a) continues in effect until the completion or
18 final termination of all proceedings for review of relief granted under this part unless, prior to the final
19 determination, the district court granting the relief sets it aside or modifies it.

20 (6) A person who violates any of the provisions of this part or any determination or order issued under
21 this part or who purposely or knowingly violates any permit condition issued under this part is guilty of a
22 misdemeanor and shall be fined an amount not less than \$500 and not more than \$10,000 or be imprisoned for
23 not more than 1 year, or both. Each day on which the violation occurs constitutes a separate offense.

24 (7) A person who knowingly makes any false statement, representation, or certification or knowingly
25 fails to make any statement, representation, or certification in any application, record, report, plan, or other
26 document filed or required to be maintained pursuant to this part shall upon conviction be punished by a fine of
27 not more than \$10,000 or by imprisonment for not more than 1 year, or both.

28 (8) A person who except as permitted by law purposely or knowingly resists, prevents, impedes, or

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1 interferes with the department or its agents in the performance of duties pursuant to this part shall be punished
2 by a fine of not more than \$5,000 or by imprisonment for not more than 1 year, or both.

3 (9) An employee of the department performing any function or duty under this part may not have a
4 direct or indirect financial interest in any strip- or underground-coal-mining operation. A person who knowingly
5 violates the provisions of this subsection shall upon conviction be punished by a fine of not more than \$2,500 or
6 by imprisonment of not more than 1 year, or both.

7 (10) Within 30 days after receipt of full payment of an administrative penalty assessed under this
8 section, the department shall issue a written release of civil liability for the violations for which the penalty was
9 assessed."

10

11 **Section 180.** Section 82-4-303, MCA, is amended to read:

12 **"82-4-303. Definitions.** As used in this part, unless the context indicates otherwise, the following
13 definitions apply:

14 (1) "Abandonment of surface or underground mining" may be presumed when it is shown that
15 continued operation will not resume;

16 (2) "Amendment" means a change to an approved operating or reclamation plan. A major amendment
17 is an amendment that may significantly affect the human environment. A minor amendment is an amendment
18 that will not significantly affect the human environment.

19 (3) "Board" means the board of environmental review provided for in 2-15-3502.

20 (4) (3) "Certification" means, with regard to tailings storage facilities, a statement of opinion by a
21 professional engineer that the work on a tailings storage facility has been conducted in accordance with the
22 normal standard of care within dam engineering practice. Certification does not constitute a warranty or
23 guarantee of facts or conditions certified.

24 (5) (4) "Completeness" means that an application contains information addressing each applicable
25 permit requirement as listed in this part or rules adopted pursuant to this part in sufficient detail for the
26 department to make a decision as to adequacy of the application to meet the requirements of this part.

27 (6) (5) "Constructor" means the company or companies constructing the built components of a tailings
28 storage facility, including but not limited to embankment dams, surface water diversion structures, tailings

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1 distribution systems, reclaim water systems, and monitoring instrumentation.

2 (7) (6) "Cyanide ore processing reagent" means cyanide or a cyanide compound used as a reagent in
3 leaching operations.

4 (8) (7) "Department" means the department of environmental quality provided for in 2-15-3501.

5 (9) (8) "Disturbed land" means the area of land or surface water that has been disturbed, beginning at
6 the date of the issuance of the permit. The term includes the area from which the overburden, tailings, waste
7 materials, or minerals have been removed and tailings ponds, waste dumps, roads, conveyor systems, load-out
8 facilities, leach dumps, and all similar excavations or coverings that result from the operation and that have not
9 been previously reclaimed under the reclamation plan.

10 (10) (9) "Engineer of record" means a qualified engineer who is the lead designer for a tailings storage
11 facility.

12 (11) (10) "Expansion" means, with regard to tailings storage facilities, a change in the size, height, or
13 configuration of or a contiguous addition to an existing tailings storage facility that increases or may increase
14 the storage capacity of the impoundment above the currently permitted capacity.

15 (12) (11) "Exploration" means:

16 (a) all activities that are conducted on or beneath the surface of lands and that result in material
17 disturbance of the surface for the purpose of determining the presence, location, extent, depth, grade, and
18 economic viability of mineralization in those lands, if any, other than mining for production and economic
19 exploitation; and

20 (b) all roads made for the purpose of facilitating exploration, except as noted in 82-4-310.

21 (13) (12) "Independent review engineer" means a licensed engineer who is a recognized expert in
22 tailings storage facility design, construction, operation, and closure.

23 (14) (13) "Material deviation" means a failure to follow a condition in a design document, corrective
24 action plan, schedule, or tailings operation, maintenance, and surveillance manual that could reasonably be
25 expected to substantively impair a tailings storage facility from performing as intended.

26 (15) (14) "Maximum credible earthquake" means the most severe earthquake that can be expected at
27 a site based on geologic and seismological evidence, including a review of all historic earthquake data of
28 events sufficiently nearby to influence the site, all faults in the area, and attenuations from causative faults to

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1 the site.

2 ~~(16)~~ ~~(15)~~ "Mineral" means any ore, rock, or substance, other than oil, gas, bentonite, clay, coal, sand,

3 gravel, peat, soil materials, or uranium, that is taken from below the surface or from the surface of the earth for

4 the purpose of milling, concentration, refinement, smelting, manufacturing, or other subsequent use or

5 processing or for stockpiling for future use, refinement, or smelting.

6 ~~(17)~~ ~~(16)~~ "Mining" commences when the operator first mines ores or minerals in commercial quantities

7 for sale, beneficiation, refining, or other processing or disposition or first takes bulk samples for metallurgical

8 testing in excess of the aggregate of 40,000 short tons.

9 ~~(18)~~ ~~(17)~~ "Observational method" means a continuous, managed, and integrated process of design,

10 construction control, monitoring, and review enabling appropriate, previously defined modifications to be

11 incorporated during and after construction.

12 ~~(19)~~ ~~(18)~~ "Operator" means a person who has an operating permit issued under 82-4-335.

13 ~~(20)~~ ~~(19)~~ "Ore processing" means milling, heap leaching, flotation, vat leaching, or other standard

14 hard-rock mineral concentration processes.

15 ~~(21)~~ ~~(20)~~ "Panel" means the tailings storage facility independent review panel created for each new or

16 expanded tailings storage facility.

17 ~~(22)~~ ~~(21)~~ "Person" means any person, corporation, firm, association, partnership, or other legal entity

18 engaged in exploration for or mining of minerals on or below the surface of the earth, reprocessing of tailings or

19 waste materials, or operation of a hard-rock mill.

20 ~~(23)~~ ~~(22)~~ "Placer deposit" means:

21 (a) naturally occurring, scattered, or unconsolidated valuable minerals in gravel, glacial, eolian,

22 colluvial, or alluvial deposits lying above bedrock; or

23 (b) all forms of deposit except veins of quartz and other rock in place.

24 ~~(24)~~ ~~(23)~~ "Placer or dredge mining" means the mining of minerals from a placer deposit by a person or

25 persons.

26 ~~(25)~~ ~~(24)~~ "Practicable" means available and capable of being implemented after taking into

27 consideration cost, existing technology, and logistics in light of overall project purposes.

28 ~~(26)~~ ~~(25)~~ "Professional engineer" means a registered professional engineer licensed to practice in

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1 Montana under Title 37, chapter 67, part 3.

2 ~~(27)~~ ~~(26)~~ "Qualified engineer" means a professional engineer who has a minimum of 10 years of direct

3 experience with the design and construction of tailings storage facilities and has the appropriate professional

4 and educational credentials to effectively determine appropriate parameters for the safe design, construction,

5 operation, and closure of a tailings storage facility.

6 ~~(28)~~ ~~(27)~~ "Reclamation plan" means the operator's written proposal, as required and approved by the

7 department, for reclamation of the land that will be disturbed. The proposal must include, to the extent practical

8 at the time of application for an operating permit:

9 (a) a statement of the proposed subsequent use of the land after reclamation, which may include use

10 of the land as an industrial site not necessarily related to mining;

11 (b) plans for surface gradient restoration to a surface suitable for the proposed subsequent use of the

12 land after reclamation is completed and the proposed method of accomplishment;

13 (c) the manner and type of revegetation or other surface treatment of disturbed areas;

14 (d) procedures proposed to avoid foreseeable situations of public nuisance, endangerment of public

15 safety, damage to human life or property, or unnecessary damage to flora and fauna in or adjacent to the area;

16 (e) the method of disposal of mining debris;

17 (f) the method of diverting surface waters around the disturbed areas when necessary to prevent

18 pollution of those waters or unnecessary erosion;

19 (g) the method of reclamation of stream channels and stream banks to control erosion, siltation, and

20 pollution;

21 (h) maps and other supporting documents that may be reasonably required by the department; and

22 (i) a time schedule for reclamation that meets the requirements of 82-4-336.

23 ~~(29)~~ ~~(28)~~ "Rock products" means decorative rock, building stone, riprap, mineral aggregates, and other

24 minerals produced by typical quarrying activities or collected from or just below the ground surface.

25 ~~(30)~~ ~~(29)~~ (a) "Small miner" means a person, firm, or corporation that engages in mining activity that is

26 not exempt from this part pursuant to 82-4-310, that engages in the business of reprocessing of tailings or

27 waste materials, that, except as provided in 82-4-310, knowingly allows other persons to engage in mining

28 activities on land owned or controlled by the person, firm, or corporation, that does not hold an operating permit

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1 under 82-4-335 except for a permit issued under 82-4-335(3) or a permit that meets the criteria of subsection
2 (30) (c) ~~(29)(c)~~ of this section, and that conducts:
3 (i) an operation that results in not more than 5 acres of the earth's surface being disturbed and
4 unreclaimed; or
5 (ii) two operations that disturb and leave unreclaimed less than 5 acres for each operation if the
6 respective mining properties are:
7 (A) the only operations engaged in by the person, firm, or corporation; and
8 (B) at least 1 mile apart at their closest point.
9 (b) For the purpose of this definition only, the department shall, in computing the area covered by the
10 operation:
11 (i) exclude access or haulage roads that are required by a local, state, or federal agency having
12 jurisdiction over that road to be constructed to certain specifications if that public agency notifies the department
13 in writing that it desires to have the road remain in use and will maintain it after mining ceases; and
14 (ii) exclude access roads for which the person, firm, or corporation submits a bond to the department in
15 the amount of the estimated total cost of reclamation along with a description of the location of the road and the
16 specifications to which it will be constructed.
17 (c) A small miner may hold an operating permit that allows disturbance of 100 acres or less. The
18 permit may be amended to add new disturbance areas, but the total area permitted for disturbance may not
19 exceed 100 acres at any time.
20 (31) ~~(30)~~ "Soil materials" means earth material found in the upper soil layers that will support plant
21 growth.
22 (32) ~~(31)~~ (a) "Surface mining" means all or any part of the process involved in mining of minerals by
23 removing the overburden and mining directly from the mineral deposits exposed, including but not limited to
24 open-pit mining of minerals naturally exposed at the surface of the earth, mining by the auger method, and all
25 similar methods by which earth or minerals exposed at the surface are removed in the course of mining.
26 (b) Surface mining does not include the extraction of oil, gas, bentonite, clay, coal, sand, gravel, peat,
27 soil materials, or uranium or excavation or grading conducted for onsite farming, onsite road construction, or
28 other onsite building construction.

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1 (33) ~~(32)~~ "Tailings" means the residual materials remaining after a milling process that separates the
2 valuable fraction from the uneconomic fraction of an ore mined by an operator.
3 (34) ~~(33)~~ (a) "Tailings storage facility" means a facility that temporarily or permanently stores tailings,
4 including the impoundment, embankment, tailings distribution works, reclaim water works, monitoring devices,
5 storm water diversions, and other ancillary structures.
6 (b) The term does not include a facility that:
7 (i) stores 50 acre-feet or less of free water or process solution;
8 (ii) is wholly contained below surrounding grade with no man-made structures retaining tailings, water,
9 or process solution or underground mines that use tailings as backfill; or
10 (iii) stores dry stack or filtered tailings.
11 (35) ~~(34)~~ "Underground mining" means all methods of mining other than surface mining.
12 (36) ~~(35)~~ "Unit of surface mined area" means that area of land and surface water included within an
13 operating permit actually disturbed by surface mining during each 12-month period of time, beginning at the
14 date of the issuance of the permit. The term includes the area from which overburden or minerals have been
15 removed, the area covered by mining debris, and all additional areas used in surface mining or underground
16 mining operations that by virtue of mining use are susceptible to erosion in excess of the surrounding
17 undisturbed portions of land.
18 (37) ~~(36)~~ "Vegetative cover" means the type of vegetation, grass, shrubs, trees, or any other form of
19 natural cover considered suitable at time of reclamation."
20

21 **Section 181.** Section 82-4-304, MCA, is amended to read:

22 **"82-4-304. Exemption -- works performed prior to promulgation of rules.** This part is not
23 applicable to any exploration or mining work performed prior to the date of promulgation of the board's initial
24 rules pursuant to 82-4-321 relating to exploration and mining. This part is not applicable to the reprocessing of
25 tailings or waste rock that occurred prior to the date of promulgation of the board's initial rules regarding those
26 activities. If, after the date of promulgation of initial rules applicable to mills not located at a mine site, work is
27 performed at a mill that does not use cyanide ore-processing reagent and that was constructed and operated
28 before promulgation of those rules, this part applies only to the areas initially disturbed after promulgation of

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1 those rules."

2

3 **Section 182.** Section 82-4-305, MCA, is amended to read:

4 ~~"82-4-305.—Exemption—small miners—written agreement.~~ (1) Except as provided in subsections
5 (3) through (11), the provisions of this part do not apply to a small miner if the small miner annually agrees in
6 writing:

7 (a) that the small miner will not pollute or contaminate any stream;

8 (b) that the small miner will provide protection for human and animal life through the installation of
9 bulkheads installed over safety collars and the installation of doors on tunnel portals;

10 (c) that the small miner will provide a map locating the miner's mining operations. The map must be of
11 a size and scale determined by the department;

12 (d) if the small miner's operations are placer or dredge mining, that the small miner shall salvage and
13 protect all soil materials for use in reclamation of that site and shall reclaim all land disturbed by the operations
14 to comparable utility and stability as that of adjacent areas.

15 (2) For small miner exemptions obtained after September 30, 1985, a small miner may not obtain or
16 continue an exemption under subsection (1) unless the small miner annually certifies in writing:

17 (a) if the small miner is an individual, that:

18 (i) no business association or partnership of which the small miner is a member or partner has a
19 small miner exemption; and

20 (ii) no corporation of which the small miner is an officer, director, or owner of record of 25% or more of
21 any class of voting stock has a small miner exemption; or

22 (b) if the small miner is a partnership or business association, that:

23 (i) none of the associates or partners holds a small miner exemption; and

24 (ii) none of the associates or partners is an officer, director, or owner of 25% or more of any class of
25 voting stock of a corporation that has a small miner exemption; or

26 (c) if the small miner is a corporation, that no officer, director, or owner of record of 25% or more of
27 any class of voting stock of the corporation:

28 (i) holds a small miner exemption;

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1 (ii) is a member or partner in a business association or partnership that holds a small miner exemption;

2 (iii) is an officer, director, or owner of record of 25% or more of any class of voting stock of another
3 corporation that holds a small miner exemption.

4 (3) A small miner whose operations are placer or dredge mining shall post a performance bond equal
5 to the state's documented cost estimate of reclaiming the disturbed land, although the bond may not exceed
6 \$10,000 for each operation. If the small miner has posted a bond for reclamation with another government
7 agency, the small miner is exempt from the requirement of this subsection.

8 (4) If a small miner who conducts a placer or dredge mining operation fails to reclaim the operation,
9 the small miner is liable to the department for all its reasonable costs of reclamation, including a reasonable
10 charge for services performed by state personnel and for state materials and equipment used. If the small
11 miner posts a surety bond, the surety is liable to the state to the extent of the bond amount and the small miner
12 is liable for the remainder of the reasonable costs to the state of reclaiming the operation.

13 (5) If a small miner who conducts a placer or dredge mining operation fails to commence reclamation
14 of the operation within 6 months after cessation of mining or within an extended period allowed by the
15 department for good cause shown or if the small miner fails to diligently complete reclamation, the department
16 shall notify the small miner by certified mail that it intends to reclaim the operation unless the small miner
17 commences reclamation within 30 days and diligently completes the reclamation. The notice must be mailed to
18 the address stated on the small miner exclusion statement or, if the small miner has notified the department of
19 a different address by letter or in the annual certification form, to the most recent address given to the
20 department. If the small miner fails to commence reclamation within 30 days or to diligently complete
21 reclamation, the department may revoke the small miner exclusion statement, forfeit any bond that has been
22 posted with the department, and enter and reclaim the operation. If the small miner has not posted a bond with
23 the department or if the reasonable costs of reclamation exceed the amount of the bond, the department may
24 also collect additional reclamation costs, as set forth in subsection (6), before or after it incurs those costs.

25 (6) To collect additional reclamation costs, the department shall notify the small miner by certified
26 mail, at the address determined under subsection (5), of the additional reasonable reclamation costs and
27 request payment within 30 days. If the small miner does not pay the additional reclamation costs within 30
28 days, the department may bring an action in district court for payment of the estimated future costs and, if the

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1 department has performed any reclamation, of its reasonable actual costs. The court shall order payment of
2 costs that it determines to be reasonable and shall retain jurisdiction until reclamation of the operation is
3 completed. Upon completion of reclamation, the court shall order payment of any additional costs that it
4 considers reasonable or the refund of any portion of any payment for estimated costs that exceeds the actual
5 reasonable costs incurred by the department.

6 (7)—A small miner who intends to use a cyanide ore processing reagent or other metal leaching
7 solvents or reagents shall obtain an operating permit for that part of the small miner's operation in which the
8 cyanide ore processing reagent or other metal leaching solvents or reagents will be used or disposed of. The
9 acreage disturbed by the operation using cyanide ore processing reagents or other metal leaching solvents or
10 reagents and covered by the operating permit is excluded from the 5-acre limit specified in 82-4-303(30)(a)(i)
11 and (30)(a)(ii) ~~82-4-303(29)(a)(i) and (29)(a)(ii).~~

12 (8)—(a) Except for a small miner proposing to conduct a placer or dredge mining operation, a small
13 miner who intends to use an impoundment to store waste from ore processing shall obtain approval for the
14 design, construction, operation, and reclamation of that impoundment and post a performance bond for that
15 part of the small miner's operation before constructing an impoundment. The small miner shall post a
16 performance bond equal to the state's documented cost estimate of reclaiming the disturbed land. If the small
17 miner has posted a bond for reclamation of that site with a federal government agency, the small miner is
18 exempt from the requirements of this subsection (8)(a).

19 (b) The department shall conduct a review of the adequacy of the bond posted by a small miner using
20 an impoundment pursuant to this section at least once every 5 years and adjust the bond if necessary to ensure
21 reclamation of the impoundment. The acreage disturbed by the portion of the operation that uses an
22 impoundment to store waste from ore processing is included in the 5-acre limit specified in 82-4-303(30)(a)(i)
23 and (30)(a)(ii) ~~82-4-303(29)(a)(i) and (29)(a)(ii)~~ and is subject to the provisions of this subsection (8).

24 (c) If a small miner under this subsection (8) fails to reclaim the operation, the small miner is liable to
25 the department for all its reasonable costs of reclamation, including a reasonable charge for services performed
26 by state personnel and for state materials and equipment used. If the small miner posts a surety bond, the
27 surety is liable to the state to the extent of the bond amount and the small miner is liable for the remainder of
28 the reasonable costs to the state of reclaiming the operation.

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1 (d) If a small miner under this subsection (8) fails to commence reclamation of the operation within 6
2 months after cessation of mining or within an extended period allowed by the department for good cause shown
3 or if the small miner fails to diligently complete reclamation, the department shall notify the small miner by
4 certified mail that it intends to reclaim the operation unless the small miner commences reclamation within 30
5 days and diligently completes the reclamation. The notice must be mailed to the address stated on the small
6 miner exclusion statement or, if the small miner has notified the department of a different address by letter or in
7 the annual certification form, to the most recent address given to the department. If the small miner fails to
8 commence reclamation within 30 days or to diligently complete reclamation, the department may revoke the
9 small miner exclusion statement, forfeit any bond that has been posted with the department, and enter and
10 reclaim the operation. If the small miner has not posted a bond with the department or if the reasonable costs of
11 reclamation exceed the amount of the bond, the department may also collect additional reclamation costs, as
12 set forth in subsection (8)(e), before or after it incurs those costs.

13 (e) To collect additional reclamation costs, the department shall notify the small miner by certified
14 mail, at the address determined under subsection (8)(d), of the additional reasonable reclamation costs and
15 request payment within 30 days. If the small miner does not pay the additional reclamation costs within 30
16 days, the department may bring an action in district court for payment of the estimated future costs and, if the
17 department has performed any reclamation, of its reasonable actual costs. The court shall order payment of
18 costs that it determines to be reasonable and shall retain jurisdiction until reclamation of the operation is
19 completed. Upon completion of reclamation, the court shall order payment of any additional costs that it
20 considers reasonable or the refund of any portion of any payment for estimated costs that exceeds the actual
21 reasonable costs incurred by the department.

22 (f) Except for a small miner who conducts a placer or dredge mining operation, a small miner utilizing
23 an impoundment to store waste from ore processing on or after April 28, 2005, shall obtain approval of the
24 design, construction, operation, and reclamation of that impoundment and post a performance bond within 6
25 months of April 28, 2005. If the small miner has posted a bond for reclamation of that site with a federal
26 government agency, the small miner is exempt from the requirements of this subsection (8)(f).

27 (9) The exemption provided in this section does not apply to a person:

28 (a) whose failure to comply with the provisions of this part, the rules adopted under this part, or a

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1 ~~permit or license issued under this part has resulted in the forfeiture of a bond, unless that person meets the~~
2 ~~conditions described under 82-4-360;~~
3 ~~(b)—who has not paid a penalty for which the department has obtained a judgment pursuant to 82-4-~~
4 ~~361;~~
5 ~~(c)—who has failed to post a reclamation bond required by this section, unless the department has~~
6 ~~certified that the area for which the bond should have been posted has been reclaimed by that person or~~
7 ~~reclaimed by the department and the person has reimbursed the department for the cost of the reclamation; or~~
8 ~~(d)—who has failed to comply with an abatement order issued pursuant to 82-4-362, unless the~~
9 ~~department has completed the abatement and the person has reimbursed the department for the cost of~~
10 ~~abatement;~~
11 ~~(10)—The exemption provided in this section does not apply to an area:~~
12 ~~(a)—under permit pursuant to 82-4-335;~~
13 ~~(b)—that has been permitted pursuant to 82-4-335 and reclaimed by the permittee, the department, or~~
14 ~~any other state or federal agency; or~~
15 ~~(c)—that has been reclaimed by or has been subject to remediation of contamination or pollution by a~~
16 ~~public agency, under supervision of a public agency, or using public funds;~~
17 ~~(11)—A small miner may not use mercury except in a contained facility that prevents the escape of any~~
18 ~~mercury into the environment."~~

19
20 **Section 183.** Section 82-4-309, MCA, is amended to read:

21 **"82-4-309. Exemption -- operations on federal lands.** This part ~~shall not be applicable~~ does not
22 apply to operations on certain federal lands as specified by the ~~board~~ department, provided it is first determined
23 by the ~~board~~ department that federal law or regulations issued by the federal agency administering such land
24 impose controls for reclamation of said lands substantially equal to or greater than those imposed by this part."

25
26 **Section 184.** Section 82-4-321, MCA, is amended to read:

27 **"82-4-321. Administration.** The department is charged with the responsibility of administering this
28 ~~part. In order to implement its terms and provisions, the board shall from time to time promulgate such and~~

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1 ~~adopting~~ rules as the ~~board~~ shall deem necessary. The department shall employ experienced, qualified persons
2 in the field of mined-land reclamation who, for the purpose of this part, are referred to as supervisors."

3
4 **Section 185.** Section 82-4-332, MCA, is amended to read:

5 **"82-4-332. Exploration license.** (1) An exploration license must be issued to any applicant who:

- 6 (a) pays a fee of \$100 to the department;
7 (b) agrees to reclaim any surface area damaged by the applicant during exploration operations, as
8 may be reasonably required by the department;
9 (c) is not in default of any other reclamation obligation under this law.

10 (2) An application for an exploration license must be made in writing, notarized, and submitted to the
11 department in duplicate upon forms prepared and furnished by it. The application must include an exploration
12 map or sketch in sufficient detail to locate the area to be explored and to determine whether significant
13 environmental problems would be encountered. The ~~board~~ department shall by rule determine the precise
14 nature of the exploration map or sketch. The applicant shall state what type of prospecting and excavation
15 techniques will be employed in disturbing the land.

16 (3) Prior to the issuance of an exploration license, the applicant shall file with the department a
17 reclamation and revegetation bond in a form and amount as determined by the department in accordance with
18 82-4-338.

19 (4) In the event that the holder of an exploration license desires to mine the area covered by the
20 exploration license and has fulfilled all of the requirements for an operating permit, the department shall allow
21 the postponement of the reclamation of the acreage explored if that acreage is incorporated into the complete
22 reclamation plan submitted with the application for an operating permit. Any land actually affected by
23 exploration or excavation under an exploration license and not covered by the operating reclamation plan must
24 be reclaimed within 2 years after the completion of exploration or abandonment of the site in a manner
25 acceptable to the department."

26
27 **Section 186.** Section 82-4-335, MCA, is amended to read:

28 **"82-4-335. Operating permit -- limitation -- fees.** (1) A person may not engage in mining, ore

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1 processing, or reprocessing of tailings or waste material, construct or operate a hard-rock mill, use cyanide ore-
2 processing reagents or other metal leaching solvents or reagents, or disturb land in anticipation of those
3 activities in the state without first obtaining a final operating permit from the department. Except as provided in
4 subsection (2), a separate final operating permit is required for each complex.

5 (2) (a) A person who engages in the mining of rock products or a landowner who allows another
6 person to engage in the mining of rock products from the landowner's land may obtain an operating permit for
7 multiple sites if each of the multiple sites does not:

8 (i) operate within 100 feet of surface water or in ground water or impact any wetland, surface water, or
9 ground water;

10 (ii) have any water impounding structures other than for storm water control;

11 (iii) have the potential to produce acid, toxic, or otherwise pollutive solutions;

12 (iv) adversely impact a member of or the critical habitat of a member of a wildlife species that is listed
13 as threatened or endangered under the Endangered Species Act of 1973; or

14 (v) impact significant historic or archaeological features.

15 (b) A landowner who is a permittee and who allows another person to mine on the landowner's land
16 remains responsible for compliance with this part, the rules adopted pursuant to this part, and the permit for all
17 mining activities conducted on sites permitted pursuant to this subsection (2) with the landowner's permission.
18 The performance bond required under this part is and must be conditioned upon compliance with this part, the
19 rules adopted pursuant to this part, and the permit of the landowner and any person who mines with the
20 landowner's consent.

21 (3) A small miner who intends to use a cyanide ore-processing reagent or other metal leaching
22 solvents or reagents shall obtain an operating permit for that part of the small miner's operation where the
23 cyanide ore-processing reagent or other metal leaching solvents or reagents will be used or disposed of.

24 (4) (a) Prior to receiving an operating permit from the department, a person shall pay the basic permit
25 fee of \$500. The department may require a person who is applying for a permit pursuant to subsection (1) to
26 pay an additional fee not to exceed the actual amount of contractor and employee expenses beyond the normal
27 operating expenses of the department whenever those expenses are reasonably necessary to provide for
28 timely and adequate review of the application, including any environmental review conducted under Title 75,

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1 chapter 1, parts 1 and 2. The ~~board~~department may further define these expenses by rule. Whenever the
2 department determines that an additional fee is necessary and the additional fee will exceed \$5,000, the
3 department shall notify the applicant that a fee must be paid and submit to the applicant an itemized estimate of
4 the proposed expenses. The department shall provide the applicant an opportunity to review the department's
5 estimated expenses. The applicant may indicate which proposed expenses the applicant considers duplicative
6 or excessive, if any.

7 (b) (i) Subject to subsection (4)(b)(ii), a contractor shall, at the request of the applicant, directly
8 submit invoices of contractor expenses to the applicant.

9 (ii) A contractor's work is assigned, reviewed, accepted, or rejected by the department pursuant to this
10 section.

11 (5) The person shall submit an application on a form provided by the department, which must contain
12 the following information and any other pertinent data required by rule:

13 (a) the name and address of the operator, the engineer of record if applicable, and, if a corporation or
14 other business entity, the name and address of its officers, directors, owners of 10% or more of any class of
15 voting stock, partners, and the like and its resident agent for service of process, if required by law;

16 (b) the minerals expected to be mined;

17 (c) a proposed reclamation plan;

18 (d) the expected starting date of operations;

19 (e) a map showing the specific area to be mined and the boundaries of the land that will be disturbed,
20 the topographic detail, the location and names of all streams, roads, railroads, and utility lines on or
21 immediately adjacent to the area, and the location of proposed access roads to be built;

22 (f) the names and addresses of the owners of record and any purchasers under contracts for deed of
23 the surface of the land within the permit area and the owners of record and any purchasers under contracts for
24 deed of all surface area within one-half mile of any part of the permit area, provided that the department is not
25 required to verify this information;

26 (g) the names and addresses of the present owners of record and any purchasers under contracts for
27 deed of all minerals in the land within the permit area, provided that the department is not required to verify this
28 information;

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1 (h) the source of the applicant's legal right to mine the mineral on the land affected by the permit,
2 provided that the department is not required to verify this information;
3 (i) the types of access roads to be built and manner of reclamation of road sites on abandonment;
4 (j) a plan that will provide, within limits of normal operating procedures of the industry, for completion
5 of the operation;
6 (k) ground water and surface water hydrologic data gathered from a sufficient number of sources and
7 length of time to characterize the hydrologic regime;
8 (l) a plan detailing the design, operation, and monitoring of impounding structures, including but not
9 limited to tailings impoundments and water reservoirs, sufficient to ensure that the structures are safe and
10 stable. For a tailings storage facility, this requirement is met by submission of a design document pursuant to
11 82-4-376, a panel report pursuant to 82-4-377, and a tailings operation, maintenance, and surveillance manual
12 pursuant to 82-4-379 prior to issuance of a draft permit.
13 (m) a plan identifying methods to be used to monitor for the accidental discharge of objectionable
14 materials and remedial action plans to be used to control and mitigate discharges to surface or ground water;
15 (n) an evaluation of the expected life of any tailings impoundment or waste area and the potential for
16 expansion of the tailings impoundment or waste site. For a tailings storage facility, this requirement is met by
17 submission of a design document pursuant to 82-4-376, a panel report pursuant to 82-4-377, and a tailings
18 operation, maintenance, and surveillance manual pursuant to 82-4-379 prior to issuance of a draft permit.
19 (o) an assessment of the potential for the postmining use of mine-related facilities for other industrial
20 purposes, including evidence of consultation with the county commission of the county or counties where the
21 mine or mine-related facilities will be located.
22 (6) Except as provided in subsection (8), the permit provided for in subsection (1) for a large-scale
23 mineral development, as defined in 90-6-302, must be conditioned to provide that activities under the permit
24 may not commence until the impact plan is approved under 90-6-307 and until the permittee has provided a
25 written guarantee to the department and to the hard-rock mining impact board of compliance within the time
26 schedule with the commitment made in the approved impact plan, as provided in 90-6-307. If the permittee
27 does not comply with that commitment within the time scheduled, the department, upon receipt of written notice
28 from the hard-rock mining impact board, shall suspend the permit until it receives written notice from the hard-

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1 rock mining impact board that the permittee is in compliance.
2 (7) When the department determines that a permittee has become or will become a large-scale
3 mineral developer pursuant to 82-4-339 and 90-6-302 and provides notice as required under 82-4-339, within 6
4 months of receiving the notice, the permittee shall provide the department with proof that the permittee has
5 obtained a waiver of the impact plan requirement from the hard-rock mining impact board or that the permittee
6 has filed an impact plan with the hard-rock mining impact board and the appropriate county or counties. If the
7 permittee does not file the required proof or if the hard-rock mining impact board certifies to the department that
8 the permittee has failed to comply with the hard-rock mining impact review and implementation requirements in
9 Title 90, chapter 6, parts 3 and 4, the department shall suspend the permit until the permittee files the required
10 proof or until the hard-rock mining impact board certifies that the permittee has complied with the hard-rock
11 mining impact review and implementation requirements.
12 (8) Compliance with 90-6-307 is not required for exploration and bulk sampling for metallurgical
13 testing when the aggregate samples are less than 10,000 tons.
14 (9) A person may not be issued an operating permit if:
15 (a) that person's failure, or the failure of any firm or business association of which that person was a
16 principal or controlling member, to comply with the provisions of this part, the rules adopted under this part, or a
17 permit or license issued under this part has resulted in either the receipt of bond proceeds by the department or
18 the completion of reclamation by the person's surety or by the department, unless that person meets the
19 conditions described in 82-4-360;
20 (b) that person has not paid a penalty for which the department has obtained a judgment pursuant to
21 82-4-361;
22 (c) that person has failed to post a reclamation bond required by 82-4-305; or
23 (d) that person has failed to comply with an abatement order issued pursuant to 82-4-362, unless the
24 department has completed the abatement and the person has reimbursed the department for the cost of
25 abatement.
26 (10) A person may not be issued a permit under this part unless, at the time of submission of a bond,
27 the person provides the current information required in subsection (5)(a) and:
28 (a) (i) certifies that the person is not currently in violation in this state of any law, rule, or regulation of

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1 this state or of the United States pertaining to air quality, water quality, or mined land reclamation; or
2 (ii) presents a certification by the administering agency that the violation is in the process of being
3 corrected to the agency's satisfaction or is the subject of a bona fide administrative or judicial appeal; and
4 (b) if the person is a partnership, corporation, or other business association, provides the certification
5 required by subsection (10)(a)(i) or (10)(a)(ii), as applicable, for any partners, officers, directors, owners of 10%
6 or more of any class of voting stock, and business association members."

7
8 **Section 187.** Section 82-4-338, MCA, is amended to read:

9 **"82-4-338. Performance bond.** (1) (a) An applicant for an exploration license or operating permit
10 shall file with the department a bond payable to the state of Montana with surety satisfactory to the department
11 in the sum to be determined by the department of not less than \$200 for each acre or fraction of an acre of the
12 disturbed land, conditioned upon the faithful performance of the requirements of this part, the rules of the board
13 department, and the permit. In lieu of a bond, the applicant may file with the department a cash deposit, an
14 assignment of a certificate of deposit, an irrevocable letter of credit, or other surety acceptable to the
15 department. The bond may not be less than the estimated cost to the state to ensure compliance with Title 75,
16 chapters 2 and 5, this part, the rules, and the permit, including the potential cost of department management,
17 operation, and maintenance of the site upon temporary or permanent operator insolvency or abandonment,
18 [during a suspension authorized pursuant to 82-4-341(8)(b)(ii) or] until full bond liquidation can be effected.

19 (b) A public or governmental agency may not be required to post a bond under the provisions of this
20 part.

21 (c) A blanket performance bond covering two or more operations may be accepted by the
22 department. A blanket bond must adequately secure the estimated total number of acres of disturbed land.

23 (d) (i) For an exploration license or operating permit authorizing activities on federal land within the
24 state, the department may accept a bond payable to the state of Montana and the federal agency administering
25 the land. The bond must provide at least the same amount of financial guarantee as required by this part.

26 (ii) The bond must provide that the department may forfeit the bond without the concurrence of the
27 federal land management agency. The bond may provide that the federal land management agency may forfeit
28 the bond without the concurrence of the department. Upon forfeiture by either agency, the bond must be

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1 payable to the department and may also be payable to the federal land management agency. If the bond is
2 payable to the department and the federal land management agency, the department, before accepting the
3 bond, shall enter into an agreement or memorandum of understanding with the federal land management
4 agency providing for administration of the bond funds in a manner that will allow the department to provide for
5 compliance with the requirements of this part, the rules adopted under this part, and the permit.

6 (iii) The department may not enter into an agreement or memorandum of understanding with a federal
7 land management agency that would require the department to impose requirements on an operator that are
8 more stringent than state law and rules.

9 (2) (a) The department may calculate one or more reclamation plan components within its jurisdiction
10 with the assistance of one or more third-party contractors selected jointly by the department and the applicant
11 and compensated by the applicant when, based on relevant past experience, the department determines that
12 additional expertise is necessary to calculate the bond amount for reclamation plan components. The
13 department may contract for assistance pursuant to this subsection in determining bond amounts for the initial
14 bond and for any subsequent bond review and adjustment. The mine owner is responsible for the first \$5,000 in
15 contractor services provided under this subsection. The mine owner and the department are each responsible
16 for 50% of any amount over \$5,000.

17 (b) To select a third-party contractor as authorized in subsection (2)(a), the department shall prepare
18 a list of no fewer than four contractors acceptable to the department and shall provide the applicant with a copy
19 of the list. The applicant shall provide the department with a list of at least 50% of the contractors from the
20 department's list. The department shall select its contractor from the list provided by the applicant.

21 (3) (a) The department shall conduct an overview of the amount of each bond annually and shall
22 conduct a comprehensive bond review at least every 5 years. The department may conduct additional
23 comprehensive bond reviews if, after modification of a reclamation or operation plan, an annual overview, or an
24 inspection of the permit area, the department determines that an increase of the bond level may be necessary.
25 The department shall consult with the licensee or permittee if a review indicates that the bond level should be
26 adjusted. When determined by the department that the set bonding level of a permit or license does not
27 represent the present costs of compliance with this part, the rules, and the permit, the department shall modify
28 the bonding requirements of that permit or license. The licensee or permittee must have 60 days to negotiate

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1 the preliminary bond determination with the department, at the end of which time period the department shall
2 issue the proposed bond determination. The department shall give the licensee or permittee a copy of the bond
3 calculations that form the basis for the proposed bond determination and, for operating permits, publish notice
4 of the proposed bond determination in a newspaper of general circulation in the county in which the operation is
5 located. The department shall issue a final bond determination in 30 days. Unless the licensee or permittee
6 requests a hearing under subsection (3)(b), the licensee or permittee shall post bond with the department in the
7 amount represented by the final bond determination no later than 30 days after issuance of the final bond
8 determination. If the licensee or permittee demonstrates that, through the exercise of reasonable diligence, the
9 licensee or permittee will not be able to post the bond within 30 days, the department shall grant a 30-day
10 extension of the deadline.

11 (b) The permittee or any person with an interest that may be adversely affected may obtain a
12 contested case hearing before the ~~board~~ department board under the provisions of the Montana Administrative
13 Procedure Act, Title 2, chapter 4, part 6, on the final bond determination by filing with the department, within 30
14 days of the issuance of the final bond determination, a written request for hearing stating the reason for the
15 request. The request for hearing must specify the amount of bond increase, if any, that the licensee or
16 permittee considers appropriate and state the reasons that the licensee or permittee considers the department's
17 final bond determination to be excessive. As a condition precedent to any right to request a hearing, the
18 licensee or permittee shall post bond with the department in the amount of the bond increase that the licensee
19 or permittee has stated is appropriate in the request for hearing or the amount that is one-half of the increase
20 contained in the department's final bond determination, whichever amount is greater. If the ~~board~~ department
21 board determines that additional bond is necessary, the licensee or permittee shall post bond in the amount
22 determined by the ~~board~~ department within 30 days of receipt of the ~~board's~~ decision. If the licensee or
23 permittee demonstrates that, through the exercise of reasonable diligence, the licensee or permittee will not be
24 able to post the bond within 30 days, the department shall grant a reasonable extension of the deadline.

25 (c) If a licensee or permittee fails to post bond in accordance with subsection (3)(a) or (3)(b) in the
26 required amounts by the required deadlines, the license or permit is suspended by operation of law and the
27 licensee or permittee shall immediately cease mining and exploration operations until the required bond is
28 posted with and approved by the department.

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1 (4) A bond filed in accordance with the provisions of this part may not be released by the department
2 until the provisions of this part, the rules adopted pursuant to this part, and the permit have been fulfilled.

3 (5) A bond filed for an operating permit obtained under 82-4-335 may not be released or decreased
4 until the public has been provided an opportunity for a hearing and a hearing has been held if requested. The
5 department shall provide reasonable statewide and local notice of the opportunity for a hearing, including but
6 not limited to publishing the notice in newspapers of general daily circulation.

7 (6) Except as provided in subsection (7), all bonds required in accordance with the provisions of this
8 section must be based upon reasonably foreseeable activities that the applicant may conduct in order to comply
9 with conditions of an operating permit or license. Bonds may be required only for anticipated activities as
10 described in subsection (1). Only those activities that themselves or in conjunction with other activities have a
11 reasonable possibility of occurring may be bonded. Bond calculations, including calculations for the initial bond
12 or for subsequent bond reviews and adjustments, may not include amounts for any occurrence or contingency
13 that is not a reasonably foreseeable result of any activity conducted by the applicant.

14 (7) (a) If the department determines, based on unanticipated circumstances that are discovered
15 following the issuance of a mining permit, that a substantial and imminent danger to public health, public safety,
16 or the environment exists or that there is a reasonable probability that a violation of water quality standards will
17 occur, the department may require an operator to submit an amended reclamation plan to address the danger
18 and to post a temporary bond to guarantee the performance of the amended portion of the reclamation plan.
19 The temporary bond may only be required if the anticipated costs associated with the plan amendment would
20 increase the total bond amount for the current plan by more than 10%, as determined in subsection (7)(b).

21 (b) (i) In determining the need for the temporary bond and the amount of the temporary bond under
22 subsection (7)(a), the department shall select a third-party contractor in consultation with the operator pursuant
23 to subsection (7)(b)(ii) to provide:

24 (A) a technical engineering analysis and report on the substantial and imminent danger to public
25 health, public safety, or the environment identified in subsection (7)(a); and

26 (B) the estimated costs of addressing the potential danger in order to establish the amount of the
27 temporary bond.

28 (ii) The department shall provide the operator with a list of at least four qualified third-party contractors.

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1 The operator shall select two qualified third-party contractors from that list. The department shall select its
2 contractor from the list provided by the operator. The operator shall reimburse the department for the
3 reasonable costs of the third-party contractor.

4 (c) An approved interim amended reclamation plan and interim bond must remain in effect until the
5 earlier of:

6 (i) the date that a revised reclamation plan is approved pursuant to 82-4-337 and a permanent bond
7 for the revised reclamation plan is submitted and accepted pursuant to this section; or

8 (ii) 2 years following the date of submission of a complete application pursuant to 82-4-337 to modify
9 the reclamation plan provision or remedy the conditions that created the need to amend the reclamation plan
10 unless the department approves or denies the complete application within 2 years of submission. The applicant
11 may agree to an extension of this deadline.

12 (d) Except as provided in subsection (8), the process provided for in this subsection (7) is not subject
13 to the provisions of Title 75, chapter 1.

14 (8) (a) In determining whether to require amendment of a reclamation plan under subsection (7)(a),
15 the department shall prepare or require the permittee to prepare a written analysis of changes in the
16 reclamation plan that may eliminate or mitigate to an acceptable level the environmental condition. The analysis
17 must include an assessment of the effectiveness of the changes and any potential negative environmental
18 impacts of the changes. The department shall prepare an environmental impact statement pursuant to Title 75,
19 chapter 1, only if the department determines that the changes would not mitigate the condition to an acceptable
20 level or may have potentially significant negative environmental impacts.

21 (b) If the department determines that preparation of an environmental impact statement is necessary,
22 the permittee shall pay the department's costs pursuant to 75-1-205.

23 (9) At the applicant's discretion, bonding in addition to that required by this section may be posted.
24 These unobligated bonds may, on the applicant's request, be applied to future bonds required by this section.

25 (10) (a) If the department determines that there exists at an area permitted or licensed under this part
26 an imminent danger to public health, public safety, or the environment caused by a violation of this part, the
27 rules adopted pursuant to this part, or the permit or license and if the permittee or licensee fails or refuses to
28 expeditiously abate the danger, the department may immediately suspend the permit or license, enter the site,

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1 and abate the danger. The department may thereafter institute proceedings to revoke the license or permit,
2 declare the permittee or licensee in default, and forfeit a portion of the bond, not to exceed \$150,000 or 10% of
3 the bond, whichever is less, to be used to abate the danger. The department shall notify the surety of the
4 forfeiture and the forfeiture amount by certified mail, and the surety shall pay the forfeiture amount to the
5 department within 30 days of receipt of the notice. The department shall, as a condition of any termination of
6 the suspension and revocation proceedings, require that the permittee or licensee reimburse the surety, with
7 interest, for any amount paid to and expended by the department pursuant to this subsection (10) and for the
8 actual cost of the surety's expenses in responding to the department's forfeiture demand.

9 (b) If the department is unable to permanently abate the imminent danger using the amount forfeited
10 under subsection (10)(a), the department may forfeit additional amounts under the procedure provided in
11 subsection (10)(a).

12 (c) The department shall return to the surety any money received from the surety pursuant to this
13 subsection (10) and not used by the department to abate the imminent danger. The amount not returned to the
14 surety must be credited to the surety and reduces the penal amount of the bond on a dollar-for-dollar basis.

15 (d) Any interest accrued on bond proceeds that is not required to abate the imminent danger
16 determined in subsection (10)(a) must be returned to the surety, unless otherwise agreed to in writing by the
17 surety.

18 (11) If a bond is terminated as a result of the action or inaction of a licensee or permittee or is canceled
19 or otherwise terminated by the surety issuing the bond and the licensee or permittee fails to post a new bond
20 for the entire amount of the terminated bond within 30 days following the notice of termination provided to the
21 department, then the license or permit must be immediately suspended without further action by the
22 department. (Bracketed language in subsection (1)(a) terminates June 30, 2026—sec. 6, Ch. 458, L. 2019.)”

23
24 **Section 188.** Section 82-4-339, MCA, is amended to read:

25 **"82-4-339. Annual report of activities by permittee -- fee -- notice of large-scale mineral**
26 **developer status.** (1) Within 30 days after completion or abandonment of operations on an area under permit
27 or within 30 days after each anniversary date of the permit, whichever is earlier, or at a later date that may be
28 provided by ~~rules of the board rule~~ and each year after that date until reclamation is completed and approved,

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1 the permittee shall pay the annual fee of \$100 and shall file a report of activities completed during the preceding
2 year on a form prescribed by the department. The report must:

3 (a) identify the permittee and the permit number;

4 (b) locate the operation by subdivision, section, township, and range and with relation to the nearest
5 town or other well-known geographic feature;

6 (c) estimate acreage to be newly disturbed by operation in the next 12-month period;

7 (d) include the number of persons on the payroll for the previous permit year and for the next permit
8 year at intervals that the department considers sufficient to enable a determination of the permittee's status
9 under 90-6-302(4);

10 (e) update the information required in 82-4-335(5)(a); and

11 (f) update any maps previously submitted or specifically requested by the department. The maps
12 must show:

13 (i) the permit area;

14 (ii) the unit of disturbed land;

15 (iii) the area to be disturbed during the next 12-month period;

16 (iv) if completed, the date of completion of operations;

17 (v) if not completed, the additional area estimated to be further disturbed by the operation within the
18 following permit year; and

19 (vi) the date of beginning, amount, and current status of reclamation performed during the previous 12
20 months.

21 (2) Whenever the department determines that the permittee has become or will, during the next
22 permit year, become a large-scale mineral developer, it shall immediately serve written notice of that fact on the
23 permittee, the hard-rock mining impact board, and the county or counties in which the operation is located."

24

25 **Section 189.** Section 82-4-342, MCA, is amended to read:

26 **"82-4-342. Amendment to operating permits.** (1) During the term of an operating permit issued
27 under this part, an operator may apply for a permit revision as described in subsections (5)(g) through (5)(j) or
28 an amendment to the permit. The operator may not apply for an amendment to delete disturbed acreage except

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1 following reclamation, as required under 82-4-336, and bond release for the disturbance, as required under 82-
2 4-338.

3 (2) (a) The ~~board~~department may by rule establish criteria for the classification of amendments as
4 major or minor. The ~~board~~department shall adopt rules establishing requirements for the content of
5 applications for revisions and major and minor amendments and the procedures for processing revisions and
6 minor amendments.

7 (b) An amendment must be considered minor if:

8 (i) it is for the purpose of retention of mine-related facilities that are valuable for postmining use;

9 (ii) evidence is submitted showing that a local government has requested retention of the mine- related
10 facilities for a postmining use; and

11 (iii) the postmining use of the mine-related facilities meets the requirements provided for in 82-4-336.

12 (3) Applications for major amendments must be processed pursuant to 82-4-337.

13 (4) The department shall review an application for a revision or a minor amendment and provide a
14 notice of decision on the adequacy of the application within 30 days. If the department does not respond within
15 30 days, then the permit is revised or amended in accordance with the application.

16 (5) The department is not required to prepare an environmental assessment or an environmental
17 impact statement for the following categories of action and permit revisions:

18 (a) actions that qualify for a categorical exclusion as defined by rule or justified by a programmatic
19 review pursuant to Title 75, chapter 1;

20 (b) administrative actions, such as routine, clerical, or similar functions of a department, including but
21 not limited to administrative procurement, contracts for consulting services, and personnel actions;

22 (c) repair or maintenance of the permittee's equipment or facilities;

23 (d) investigation and enforcement actions, such as data collection, inspection of facilities, or
24 enforcement of environmental standards;

25 (e) ministerial actions, such as actions in which the agency does not exercise discretion, but acts
26 upon a given state of facts in a prescribed manner;

27 (f) approval of actions that are primarily social or economic in nature and that do not otherwise affect
28 the human environment;

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- (g) changes in a permit boundary that increase disturbed acres that are insignificant in impact relative to the entire operation, provided that the increase is less than 25 acres or 10% of the permitted area, whichever is less;
- (h) changes to an approved reclamation plan if the changes are consistent with this part and rules adopted pursuant to this part;
- (i) changes in an approved operating plan for an activity that was previously permitted if the changes will be insignificant relative to the entire operation and the changes are consistent with subsection (5)(g);
- (j) changes in a permit for the purpose of retention of mine-related facilities that are valuable for postmining use; and
- (k) modifications to a tailings storage facility that result in a minor expansion to the facility if:
- (i) the proposed modification is certified by the seal of the engineer of record;
- (ii) the capacity increase resulting from the expansion is no greater than 15% of the capacity of the existing tailings storage facility; and
- (iii) the modification complies with 82-4-376(2)(l) and (2)(dd) and is exempt under subsection (5)(g), (5)(h), or (5)(i) of this section."

Section 190. Section 82-4-353, MCA, is amended to read:

"82-4-353.—(Temporary) Administrative remedies—notice—appeals—parties.—(1) Upon receipt of an application for an operating permit, the department shall provide notice of the application by publication in a newspaper of general circulation in the area to be affected by the operation. The notice must be published once a week for 3 successive weeks.

(2)—An applicant for a permit or license or for an amendment or revision to a permit or license may request a hearing on a denial of the application by submitting a written request for a hearing within 30 days of receipt of written notice of the denial. The request must state the reason that the hearing is requested.

(3)—All hearings and appeals under 82-4-337(4), 82-4-338(3)(b), 82-4-341(7) and (9), 82-4-361, 82-4-362, and subsection (2) of this section must be conducted by the board department in accordance with the Montana Administrative Procedure Act. Any person whose interests may be adversely affected as a result of an action taken pursuant to this part may become a party to any proceeding held under this part upon a showing

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that the person is capable of adequately representing the interests claimed.

(4)—As used in this section, "person" means any individual, corporation, partnership, or other legal entity. (Terminates June 30, 2026—sec. 6, Ch. 458, L. 2019.)

82-4-353.—(Effective July 1, 2026) Administrative remedies—notice—appeals—parties.—(1)

Upon receipt of an application for an operating permit, the department shall provide notice of the application by publication in a newspaper of general circulation in the area to be affected by the operation. The notice must be published once a week for 3 successive weeks.

(2)—An applicant for a permit or license or for an amendment or revision to a permit or license may request a hearing on a denial of the application by submitting a written request for a hearing within 30 days of receipt of written notice of the denial. The request must state the reason that the hearing is requested.

(3)—All hearings and appeals under 82-4-337(4), 82-4-338(3)(b), 82-4-341(7) and (8), 82-4-361, 82-4-362, and subsection (2) of this section must be conducted by the board department in accordance with the Montana Administrative Procedure Act. Any person whose interests may be adversely affected as a result of an action taken pursuant to this part may become a party to any proceeding held under this part upon a showing that the person is capable of adequately representing the interests claimed.

(4)—As used in this section, "person" means any individual, corporation, partnership, or other legal entity."

Section 191. Section 82-4-361, MCA, is amended to read:

"82-4-361.—Violation—penalties—waiver.—(1) When the department has reason to believe that a person is in violation of this part, a rule adopted or an order issued under this part, or a term or condition of a permit issued under this part, it shall send a violation letter to the person. The violation letter must describe the provision of the statute, rule, order, or permit alleged to be violated and the facts alleged to constitute the violation. The letter must also recommend corrective actions that are necessary to return to compliance. Issuance of a violation letter under this subsection does not limit the authority of the department under this part to bring a judicial action for penalties or injunctive relief or to initiate an administrative enforcement action.

(2)—(a) By issuance of an order pursuant to subsection (6), the department may assess an administrative penalty of not less than \$100 or more than \$1,000 for each of the following violations and an

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1 additional-administrative-penalty-of-not-less-than-\$100-or-more-than-\$1,000-for-each-day-during-which-the
2 violation-continues-and-may-bring-an-action-for-an-injunction-from-continuing-the-violation-against:
3 (i)—a-person-or-operator-who-violates-a-provision-of-this-part,-a-rule-adopted-or-an-order-issued-under
4 this-part,-or-a-term-or-condition-of-a-permit;-or
5 (ii)—any-director,-officer,-or-agent-of-a-corporation-who-purposely-or-knowingly-authorizes,-orders,-or
6 carries-out-a-violation-of-a-provision-of-this-part,-a-rule-adopted-or-an-order-issued-under-this-part,-or-a-term-or
7 condition-of-a-permit;
8 (b)—If-the-violation-created-an-imminent-danger-to-the-health-or-safety-of-the-public-or-caused
9 significant-environmental-harm,-the-maximum-administrative-penalty-is-\$5,000-for-each-day-of-violation;
10 (c)—This-subsection-does-not-limit-the-authority-of-the-department-to-bring-a-judicial-action-for-penalties
11 or-injunctive-relief-prior-to-or-instead-of-initiating-an-administrative-enforcement-action-under-this-part;
12 (3)—The-department-may-bring-a-judicial-action-seeking-a-penalty-of-not-more-than-\$5,000-for-a
13 violation-listed-in-subsection-(2)(a)-and-a-penalty-of-not-more-than-\$5,000-for-each-day-that-the-violation
14 continues;
15 (4)—Penalties-assessed-under-this-section-must-be-determined-in-accordance-with-the-penalty-factors
16 in-82-4-1001;
17 (5)—The-department-may-bring-an-action-for-a-restraining-order-or-a-temporary-or-permanent-injunction
18 against-an-operator-or-other-person-violating-or-threatening-to-violate-an-order-issued-under-this-part;
19 (6)—(a)—In-addition-to-the-violation-letter-sent-pursuant-to-subsection-(1),-the-department-may-also
20 issue-an-order-if-it-has-credible-information-that-a-violation-listed-in-subsection-(2)-has-occurred.-The-order-must
21 specify-the-provision-of-the-part,-rule,-order,-or-permit-alleged-to-be-violated-and-the-facts-alleged-to-constitute
22 the-violation.-The-order-may-require-necessary-corrective-action-within-a-reasonable-period-of-time,-may-assess
23 an-administrative-penalty-determined-in-accordance-with-this-section,-or-both.-The-order-must-be-served
24 personally-or-by-certified-mail;
25 (b)—An-order-issued-pursuant-to-subsection-(6)(a)-becomes-final-unless,-within-30-days-after-the-order
26 is-served,-the-person-to-whom-the-order-is-issued-submits-to-the-board-department-a-written-request-for-a
27 hearing-stating-the-reason-for-the-request.-Service-of-the-order-by-mail-is-complete-3-business-days-after
28 mailing.-If-a-request-for-a-hearing-is-submitted,-a-hearing-must-be-held-within-a-reasonable-time-under-the

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1 contested-case-provisions-of-the-Montana-Administrative-Procedure-Act,-Title-2,-chapter-4,-part-6.-After-a
2 hearing,-the-board-department-shall-affirm,-modify,-or-rescind-the-order;
3 (7)—Legal-actions-for-penalties-or-injunctive-relief-under-this-section-must-be-brought-in-the-district
4 court-of-the-county-in-which-the-alleged-violation-occurred-or,-if-mutually-agreed-to-by-the-parties-to-the-action,
5 in-the-first-judicial-district,-Lewis-and-Clark-County-;"
6
7 **Section 192.** Section 82-4-362, MCA, is amended to read:
8 **"82-4-362.—Suspension of permits — hearing.** (1) If any of the requirements of this part, of the rules
9 adopted under this part, or of a license or permit has not been complied with, the department shall serve a
10 notice of violation on the licensee or permittee or, if necessary, the director shall order the suspension of the
11 license or permit. A license or permit may also be suspended for failure to comply with an order to pay a civil
12 penalty if the order is not subject to administrative or judicial review. The director may order immediate
13 suspension of a license or permit whenever the director finds that a violation of this part, of the rules adopted
14 under this part, or of a license or permit is creating an imminent danger to the health or safety of persons
15 outside the permit area. The notice or order must be handed to the licensee or permittee in person or served on
16 the licensee or permittee by certified mail addressed to the permanent address shown on the application for a
17 license or permit. The notice of violation or order of suspension must specify the provision of this part, the rules
18 adopted under this part, or the license or permit violated and the facts alleged to constitute the violation and
19 must, if the violation has not been abated, order abatement within a specified time period.
20 (2) —If the licensee or permittee has not complied with the requirements set forth in the notice of
21 violation or order of suspension within the time limits set in the notice or order, the license or permit may be
22 revoked by order of the department and the performance bond forfeited to the department. The notice of
23 violation or order of suspension must state when those measures may be undertaken and must give notice of
24 the opportunity for a hearing before the board-department. A hearing may be requested by submitting a written
25 request stating the reason for the request to the board-department within 30 days after receipt of the notice or
26 order. If a hearing is requested within the 30-day period, the license or permit may not be revoked and the bond
27 may not be forfeited until a final decision is made by the board-department;
28 (3) —If a permittee fails to pay the fee or file the report required under 82-4-339, the department shall

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1 ~~serve notice of this failure, by certified mail or personal delivery, on the permittee. If the permittee does not~~
2 ~~comply within 30 days of receipt of the notice, the director shall suspend the permit. The director shall reinstate~~
3 ~~the permit upon compliance."~~

5 **Section 193.** Section 82-4-371, MCA, is amended to read:

6 **"82-4-371. Reclamation of abandoned mine sites.** (1) Agents, employees, or contractors of the
7 department may enter upon property for the purpose of conducting studies or exploratory work to determine
8 whether the property has been mined and not reclaimed and rehabilitated in accordance with the requirements
9 of this part and to determine the feasibility of restoration or reclamation of the property or abatement, control, or
10 prevention of the adverse effects of past mining practices. The department may bring an injunctive action to
11 restrain interference with the exercise of the right to enter and inspect granted in this subsection.

12 (2) (a) The department may enter upon property pursuant to subsection (2)(b) if it makes a finding
13 that:

14 (i) land or water resources on the property have been adversely affected by past mining practices;

15 (ii) the adverse effects are at a stage that, in the public interest, action to restore or reclaim the
16 property or to abate, control, or prevent the adverse effects should be taken; and

17 (iii) the owners of the land or water resources where entry must be made to restore or reclaim the
18 property or to abate, control, or prevent the adverse effects of past mining practices are not known or readily
19 available or the owners will not give permission for the department or its agents, employees, or contractors to
20 enter upon the property to restore or reclaim the property or to abate, control, or prevent the adverse effects of
21 past mining practices.

22 (b) If the department has made findings pursuant to subsection (2)(a), agents, employees, or
23 contractors of the department may enter upon property adversely affected by past mining practices and other
24 property necessary for access to the adversely affected property to do all things necessary or expedient to
25 restore or reclaim the property or to abate, control, or prevent the adverse effects of past mining practices after:

26 (i) giving notice by mail to the owner, if known, and a purchaser under contract for deed, if known; or

27 (ii) if neither is known, posting notice upon the property and advertising in a newspaper of general
28 circulation in the county in which the property lies.

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1 (c) Entry upon property pursuant to this section is not an act of condemnation of property or of
2 trespass but rather an exercise of the power granted by Article IX, sections 1 and 2, of the Montana
3 constitution.

4 (3) The ~~board~~department may acquire the necessary property by gift or purchase. A gift or purchase
5 must be approved by the board of land commissioners. If the property cannot be acquired by gift or purchase at
6 a reasonable cost, proceedings may be instituted in the manner provided in Title 70, chapter 30, against all
7 nonaccepting landholders if:

8 (a) acquisition of the property is necessary for successful reclamation;

9 (b) the acquired property after restoration or reclamation or after abatement, control, or prevention of
10 the adverse effects of past mining practices will serve recreation and historic purposes or conservation and
11 reclamation purposes or provide open space benefits; and

12 (c) (i) permanent facilities, such as treatment plants or relocated stream channels, will be constructed
13 on the property for the restoration or reclamation of the property or for abatement, control, or prevention of the
14 adverse effects of past mining practices; or

15 (ii) acquisition of refuse disposal sites and all refuse on the sites will serve the purposes of this part in
16 that public ownership is desirable to meet emergency situations and prevent recurrences of the adverse effects
17 of past mining practices.

18 (4) The department may record in the office of the clerk and recorder in the county in which property
19 that has been reclaimed pursuant to 82-4-424 or this section is located a notice that the property has been
20 mined and reclaimed. The notice must include the date and a brief description of the reclamation."

22 **Section 194.** ~~Section 82-4-403, MCA, is amended to read:~~

23 ~~"82-4-403. Definitions. When used in this part, unless a different meaning clearly appears from the~~
24 ~~context, the following definitions apply:~~

25 (1) ~~"Affected land" means the area of land and land covered by water that is disturbed by open cut~~
26 ~~operations. A private road may be included as affected land only with the landowner's consent.~~

27 (2) ~~"Amendment" means a change to the approved permit.~~

28 (3) ~~"Board" means the board of environmental review provided for in 2-15-3502.~~

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- 1 (4) ~~(3)~~ "Department" means the department of environmental quality provided for in 2-15-3501.
- 2 (5) ~~(4)~~ "Landowner" means the holder of legal title to land subjected to an opencut operation.
- 3 (6) ~~(5)~~ "Materials" means bentonite, clay, scoria, peat, sand, soil, gravel, or mixtures of those
- 4 substances.
- 5 (7) ~~(6)~~ "Opencut operation" means activities conducted for the primary purpose of sale or utilization of
- 6 materials, including:
- 7 (a) mine site preparation;
- 8 (b) ~~(i)~~ removing the overburden and mining directly from the exposed natural deposits; or
- 9 ~~(ii)~~ mining directly from natural deposits of materials;
- 10 (c) processing of materials mined from the natural deposits, except that processing facilities located
- 11 more than 300 feet from where materials were mined or are permitted to be mined are not part of the opencut
- 12 operation;
- 13 (d) transporting, depositing, staging, and stockpiling of overburden and materials unless the activity
- 14 occurs more than 300 feet from where the materials were mined or are permitted to be mined;
- 15 (e) storing or stockpiling of materials at processing facilities that are part of the opencut operation;
- 16 (f) reclamation of affected land; and
- 17 (g) parking or staging of vehicles, equipment, or supplies unless:
- 18 ~~(i)~~ the activity is separated from other opencut operations by at least 25 feet and is connected to the
- 19 opencut operation by a single road that is no more than 25 feet wide; or
- 20 ~~(ii)~~ the activity is inside the construction disturbance area shown on a construction project plan.
- 21 (8) ~~(7)~~ "Operator" means a person who holds a permit issued pursuant to this part. For purposes of
- 22 enforcing the provisions of this part, the term also includes any person conducting opencut operations on
- 23 affected land that is not covered by a permit.
- 24 (9) ~~(8)~~ "Overburden" means the earth that lies above a natural deposit of materials.
- 25 (10) ~~(9)~~ "Person" means:
- 26 (a) a natural person;
- 27 (b) a firm, association, partnership, cooperative, or corporation;
- 28 (c) a department, agency, or instrumentality of the state or any governmental subdivision; or

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- 1 (d) any other entity.
- 2 (11) ~~(10)~~ "Plan of operation" means a plan that:
- 3 (a) meets the requirements of 82-4-434; and
- 4 (b) contains a description of current land use, topographical data, hydrologic data, soils data,
- 5 proposed mine areas, proposed mining and processing operations, proposed reclamation, and appropriate
- 6 maps.
- 7 (12) ~~(11)~~ "Processing facilities" means:
- 8 (a) crushers, screens, and pug mills;
- 9 (b) asphalt, wash, and concrete plants;
- 10 (c) treatment, sedimentation, or retention areas for processing facilities; and
- 11 (d) areas receiving washout from vehicles and equipment using the processing facilities.
- 12 (13) ~~(12)~~ "Reclamation" means the reconditioning of affected land to make the area suitable for
- 13 productive use, including but not limited to forestry, agriculture, grazing, wildlife, recreation, or residential or
- 14 industrial development.
- 15 (14) ~~(13)~~ "Soil" means the dark or root-bearing surface matter that has been generated through time by
- 16 the interaction of biological activity, climate, topography, and parent material and that is capable of sustaining
- 17 plant growth and is recognized and identified as such by standard authorities and methods."
- 18
- 19 **Section 195.** Section 82-4-406, MCA, is amended to read:
- 20 **"82-4-406. Exemption -- opencut operations on federal and state lands.** This part is not applicable
- 21 to operations on certain federal and state lands as specified by the board department, provided it is first
- 22 determined by the board department that laws, regulations, or rules administered or issued by the federal or
- 23 state agency administering or having jurisdiction over the affected land impose controls for opencut operations
- 24 on those lands equal to or greater than those imposed by this part."
- 25
- 26 **Section 196.** Section 82-4-422, MCA, is amended to read:
- 27 **"82-4-422. Powers, duties, and functions.** (1) The department has the powers, duties, and functions
- 28 to:

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1 (a) issue permits when, on the basis of the information set forth in the application and an evaluation of
2 the proposed opencut operations, the department finds that the requirements of this part and rules adopted to
3 implement this part will be observed;

4 (b) amend permits in accordance with the provisions of 82-4-436;

5 (c) reclaim any affected land with respect to which a bond has been forfeited;

6 (d) make investigations or inspections that are considered necessary to ensure compliance with any
7 provision of this part; and

8 (e) enforce and administer the provisions of this part and issue orders necessary to implement the
9 provisions of this part.

10 (2) The ~~board~~department shall:

11 (a) adopt rules that pertain to opencut operations in order to accomplish the purposes of this part;

12 (b) adopt rules:

13 (i) establishing uniform procedures for filing of necessary records;

14 (ii) providing procedures for the issuance of permits and filing of annual reports; and

15 (iii) providing other administrative requirements ~~that the board considers~~ necessary to implement this
16 part; and.

17 (c)(3) ~~The board shall~~ conduct hearings and, for the purposes of conducting those hearings,
18 administer oaths and affirmations, subpoena witnesses, compel attendance of witnesses, hear evidence, and
19 require the production of any books, papers, correspondence, memoranda, agreements, documents, or other
20 records relevant or material to the inquiry."

21

22 **Section 197.** Section 82-4-427, MCA, is amended to read:

23 ~~"82-4-427.—Hearing—appeal—venue.—(1) (a) Subject to subsections (1)(b) and (1)(c), a person~~
24 ~~whose interests are or may be adversely affected by a final decision of the department to approve or~~
25 ~~disapprove a permit application and accompanying material or a permit amendment application and~~
26 ~~accompanying material under this part is entitled to a hearing before the board department if a written request~~
27 ~~stating the reasons for the appeal is submitted to the board department within 30 days of the department's~~
28 ~~decision;~~

Amendment - 1st Reading - Requested by: Duane Ankney

67th Legislature

Drafter: Joe Kolman, 406-444-3747

SB 233.1.1

1 ~~(b)—If an application was noticed publicly as required by this part, to be eligible to file for an appeal a~~
2 ~~person must have either submitted comments to the department on an application or submitted comments at a~~
3 ~~public meeting held under 82-4-432;~~

4 ~~(c)—Subsection (1)(b) does not apply to a person filing for an appeal of an application that was not~~
5 ~~required to be noticed publicly by this part;~~

6 ~~(2)—An operator may request a hearing before the board department on:~~

7 ~~(a)—a final decision of the department director pursuant to 82-4-436(4) by submitting a request for a~~
8 ~~hearing within 15 days of receipt of notice of the director's decision; and~~

9 ~~(b)—an order of suspension or revocation issued under 82-4-442 by filing a request for hearing within~~
10 ~~30 days of receipt of the decision;~~

11 ~~(3)—The operator or the landowner may request a hearing before the board department on a decision~~
12 ~~on a bond release application by submitting a written request stating the reasons for the appeal within 30 days~~
13 ~~of the receipt of the decision;~~

14 ~~(4)—The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4,~~
15 ~~part 6, apply to a hearing held under this section;~~

16 ~~(5)—A petition for judicial review of a board department decision made pursuant to this section must be~~
17 ~~brought in the county in which the permitted activity is proposed to occur or, if mutually agreed upon by both~~
18 ~~parties in the action, in the first judicial district, Lewis and Clark County. If an activity is proposed to occur in~~
19 ~~more than one county, the action may be brought in any of the counties in which the activity is proposed to~~
20 ~~occur;~~

21 ~~(6)—The petition for judicial review must include the party to whom the permit was issued or the~~
22 ~~applicant unless otherwise agreed to by the permit holder or applicant. All judicial challenges of permits for~~
23 ~~projects with a project cost, as determined by the court, of more than \$1 million must have precedence over any~~
24 ~~civil cause of a different nature pending in that court. If the court determines that the challenge was without~~
25 ~~merit or was for an improper purpose, such as to harass, to cause unnecessary delay, or to impose needless or~~
26 ~~increased cost in litigation, the court may award attorney fees and costs incurred in defending the action."~~

27

28 **Section 198.** Section 82-4-437, MCA, is amended to read:

Amendment - 1st Reading - Requested by: Duane Ankney

67th Legislature

Drafter: Joe Kolman, 406-444-3747

SB 233.1.1

1 "82-4-437. Annual report -- fees. (1) For each opencut operation, the operator shall file an annual
2 report on a form furnished by the department. The report must contain the information and be submitted at
3 times provided in rules of the ~~board~~ department.
4 (2) (a) Except as provided in subsection (2)(b), each opencut operation shall submit with the annual
5 report a fee of 4.5 cents per cubic yard of materials for all operations mined during the period covered by the
6 report.
7 (b) Opencut operations that mine, extract, or produce bentonite are not subject to the fee in
8 subsection (2)(a).
9 (3) The department:
10 (a) shall require the operator to pay the following fees:
11 (i) \$1,500 for each permit application submitted pursuant to 82-4-432(1); and
12 (ii) for each amendment application submitted pursuant to 82-4-432(11):
13 (A) \$750 if the date of the amendment application is 10 years or less from the date of the permit
14 approval; or
15 (B) \$1,500 if the date of the amendment application is more than 10 years from the date of the permit
16 approval; and
17 (b) shall adopt rules for applications or responses that are administrative. Fees, if any, for
18 administrative actions identified under this subsection (3) may not exceed \$250.
19 (4) Pursuant to the provisions of 82-4-441, a person who mines materials without a permit in violation
20 of this part shall submit a report and the fees required by subsections (2)(a) and (3)(a)(i) of this section."

22 Section 199. Section 82-4-441, MCA, is amended to read:

23 "~~82-4-441. Administrative and judicial penalties -- enforcement. (1) When the department has~~
24 ~~reason to believe that a person is in violation of this part, a rule adopted or an order issued under this part, or a~~
25 ~~term or condition of a permit issued under this part, it shall send a violation letter to the person. The violation~~
26 ~~letter must describe the provision of the statute, rule, order, or permit alleged to be violated and the facts~~
27 ~~alleged to constitute the violation. The letter must also recommend corrective actions that are necessary to~~
28 ~~return to compliance. Issuance of a violation letter under this subsection does not limit the authority of the~~

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67th Legislature

Drafter: Joe Kolman, 406-444-3747

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1 ~~department under this part to bring a judicial action for penalties or injunctive relief or to initiate an~~
2 ~~administrative enforcement action.~~
3 (2) ~~By issuance of an order pursuant to subsection (5), the department may assess against a person~~
4 ~~who violates any of the provisions of this part, rules adopted or orders issued under this part, or provisions of a~~
5 ~~permit:~~
6 (a) ~~an administrative penalty of not less than \$100 or more than \$1,000 for the violation; and~~
7 (b) ~~an additional administrative penalty of not less than \$100 or more than \$1,000 for each day during~~
8 ~~which a violation continues.~~
9 (3) ~~The department may bring a judicial action seeking a penalty of not more than \$5,000 against a~~
10 ~~person who violates any of the provisions of this part, rules adopted or orders issued under this part, or~~
11 ~~provisions of a permit and a penalty of not more than \$5,000 for each day that the violation continues. In~~
12 ~~determining the amount of the penalty, the district court shall consider the factors in subsection (4).~~
13 (4) ~~Penalties assessed under this section must be determined in accordance with the penalty factors~~
14 ~~in 82-4-1001.~~
15 (5) (a) ~~In addition to the violation letter sent pursuant to subsection (1), the department may also~~
16 ~~issue an order if it has credible information that a violation listed in subsection (2) has occurred. The order must~~
17 ~~specify the provision of the part, rule, order, or permit alleged to be violated and the facts alleged to constitute~~
18 ~~the violation. The order may require necessary corrective action within a reasonable period of time, may assess~~
19 ~~an administrative penalty determined in accordance with this section, or both. The order must be served~~
20 ~~personally or by certified mail.~~
21 (b) ~~An order issued pursuant to subsection (5)(a) becomes final unless, within 30 days after the order~~
22 ~~is served, the person to whom the order is issued submits to the board department a written request for a~~
23 ~~hearing stating the reason for the request. Service of an order by mail is complete 3 business days after~~
24 ~~mailing. If a request for a hearing is filed, a hearing must be held within a reasonable time under the contested~~
25 ~~case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6. After a hearing, the~~
26 ~~board department shall affirm, modify, or rescind the order.~~
27 (6) ~~The department may bring an action to enjoin an operator or other person violating or threatening~~
28 ~~to violate this part, rules adopted pursuant to this part, or a permit issued pursuant to this part. Actions for~~

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1 injunctions or penalties must be filed in the district court of the county in which the open-cut operation is located
2 or, if mutually agreed on by both parties in the action, in the first judicial district, Lewis and Clark County.

3 (7) ~~The provisions of this section do not limit the authority of the department to bring a judicial action~~
4 ~~for penalties or injunctive relief prior to or instead of initiating an administrative enforcement action under this~~
5 ~~part."~~

7 **Section 200.** Section 82-4-442, MCA, is amended to read:

8 **"82-4-442. Suspension and revocation orders.** (1) (a) The department may, after affording the
9 operator an opportunity for an informal conference, order the suspension of a permit if:

10 (i) ~~the operator fails to comply with a penalty order or a corrective action order issued pursuant to 82-~~
11 ~~4-441; or~~

12 (ii) ~~the operator has violated this part, a rule adopted pursuant to this part, or the permit and the~~
13 ~~violation could reasonably be expected to create a danger to the health or safety of persons outside the permit~~
14 ~~area or significant environmental harm to land, air, or water. The order of suspension must be served on the~~
15 ~~operator personally or by certified mail addressed to the permanent address shown on the most recently filed~~
16 ~~annual report. The order of suspension must specify the provision of this part, the rules adopted under this part,~~
17 ~~or the permit violated and the facts alleged to constitute the violation and must, if the violation has not been~~
18 ~~corrected, order corrective action within a specified time period.~~

19 (b) ~~The department may order immediate suspension of a permit whenever it finds that a violation of~~
20 ~~this part, the rules adopted under this part, or a permit is creating an imminent danger to the health or safety of~~
21 ~~persons outside the permit area. The order must require immediate corrective action.~~

22 (c) ~~The operator upon whom an order is served may file a request for hearing with the board~~
23 ~~department within 30 days of service of the order. The request for hearing must specify the reason for the~~
24 ~~request. The filing of a request for hearing on an order issued does not stay the suspension or corrective action~~
25 ~~requirement, but the board department may, upon written request of the operator, stay either or both of these~~
26 ~~requirements.~~

27 (2) ~~If the operator has not complied with the requirements set forth in the order of suspension within~~
28 ~~the time limits set in the order, the permit may be revoked by order of the department and the performance~~

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1 bond forfeited to the department. ~~The operator may request a hearing before the board department by~~
2 ~~submitting a written request stating the reason for the request to the board department within 30 days after~~
3 ~~service of the order. If a hearing is requested within the 30-day period, the permit may not be revoked and the~~
4 ~~bond may not be forfeited until the board department makes a final decision.~~

5 (3) ~~If an operator fails to file the report required under 82-4-437, the department shall serve personally~~
6 ~~or by certified mail a notice letter informing the operator of the failure. If the operator does not file the report~~
7 ~~within 30 days of receipt of the letter, the department may issue a penalty order pursuant to 82-4-441 or a~~
8 ~~suspension order pursuant to this section. If the permit has been suspended, the department shall reinstate the~~
9 ~~permit upon compliance.~~

10 (4) ~~Maintenance, monitoring, reporting, reclamation, and other activities required by statute, rule, or~~
11 ~~the permit and intended to protect public health or safety or the environment must continue during any period of~~
12 ~~suspension unless otherwise provided in the order."~~

14 **Section 201.** Section 82-4-445, MCA, is amended to read:

15 **"82-4-445. Reclamation of abandoned mine sites.** (1) Agents, employees, or contractors of the
16 department may enter upon property for the purpose of conducting studies or exploratory work to determine
17 whether the property has been mined and not reclaimed and rehabilitated in accordance with the requirements
18 of this part and to determine the feasibility of restoration or reclamation of the property or abatement, control, or
19 prevention of the adverse effects of past mining practices. The department may bring an injunctive action to
20 restrain interference with the exercise of the right to enter and inspect granted in this subsection.

21 (2) (a) The department may enter upon property pursuant to subsection (2)(b) if it makes a finding
22 that:

23 (i) land or water resources on the property have been adversely affected by past mining practices;
24 (ii) the adverse effects are at a stage that, in the public interest, action to restore or reclaim the
25 property or to abate, control, or prevent the adverse effects should be taken; and

26 (iii) the owners of the land or water resources where entry must be made to restore or reclaim the
27 property or to abate, control, or prevent the adverse effects of past mining practices are not known or readily
28 available or the owners will not give permission for the department or its agents, employees, or contractors to

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1 enter upon the property to restore or reclaim the property or to abate, control, or prevent the adverse effects of
2 past mining practices.
3 (b) If the department has made findings pursuant to subsection (2)(a), agents, employees, or
4 contractors of the department may enter upon property adversely affected by past mining practices and other
5 property necessary for access to the adversely affected property to do all things necessary or expedient to
6 restore or reclaim the property or to abate, control, or prevent the adverse effects of past mining practices after:
7 (i) giving notice by mail to the owner, if known, and a purchaser under contract for deed, if known; or
8 (ii) if neither is known, posting notice upon the property and advertising in a newspaper of general
9 circulation in the county in which the property lies.
10 (c) Entry upon property pursuant to this section is not an act of condemnation of property or of
11 trespass but rather an exercise of the power granted by Article IX, sections 1 and 2, of the Montana
12 constitution.
13 (3) The ~~board~~ department may acquire the necessary property by gift or purchase, or if the property
14 cannot be acquired by gift or purchase at a reasonable cost, proceedings may be instituted in the manner
15 provided in Title 70, chapter 30, against all nonaccepting landholders if:
16 (a) acquisition of the property is necessary for successful reclamation;
17 (b) the acquired property after restoration or reclamation or after abatement, control, or prevention of
18 the adverse effects of past mining practices will serve recreation and historic purposes or conservation and
19 reclamation purposes or provide open space benefits; and
20 (c) (i) permanent facilities, such as treatment plants or relocated stream channels, will be constructed
21 on the property for the restoration or reclamation of the property or for abatement, control, or prevention of the
22 adverse effects of past mining practices; or
23 (ii) acquisition of refuse disposal sites and all refuse on the sites will serve the purposes of this part in
24 that public ownership is desirable to meet emergency situations and prevent recurrences of the adverse effects
25 of past mining practices.
26 (4) The department may record in the office of the clerk and recorder in the county in which property
27 that has been reclaimed pursuant to 82-4-424 or this section is located a notice that the property has been
28 mined and reclaimed. The notice must include the date and a brief description of the reclamation."

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1
2 **Section 202.** Section 82-4-1001, MCA, is amended to read:
3 **"82-4-1001. Penalty factors.** (1) In determining the amount of an administrative or civil penalty
4 assessed under the statutes listed in subsection (4), the department of environmental quality or the district
5 court, as appropriate, shall take into account the following factors:
6 (a) the nature, extent, and gravity of the violation;
7 (b) the circumstances of the violation;
8 (c) the violator's prior history of any violation, which:
9 (i) must be a violation of a requirement under the authority of the same chapter and part as the
10 violation for which the penalty is being assessed;
11 (ii) must be documented in an administrative order or a judicial order or judgment issued within 3 years
12 prior to the date of the occurrence of the violation for which the penalty is being assessed; and
13 (iii) may not, at the time that the penalty is being assessed, be undergoing or subject to administrative
14 appeal or judicial review;
15 (d) the economic benefit or savings resulting from the violator's action;
16 (e) the violator's good faith and cooperation;
17 (f) the amounts voluntarily expended by the violator, beyond what is required by law or order, to
18 address or mitigate the violation or impacts of the violation; and
19 (g) other matters that justice may require.
20 (2) Except for penalties assessed under 82-4-254, after the amount of a penalty is determined under
21 (1), the department of environmental quality or the district court, as appropriate, may consider the violator's
22 financial ability to pay the penalty and may institute a payment schedule or suspend all or a portion of the
23 penalty.
24 (3) Except for penalties assessed under 82-4-254, the department of environmental quality may
25 accept a supplemental environmental project as mitigation for a portion of the penalty. For purposes of this
26 section, a "supplemental environmental project" is an environmentally beneficial project that a violator agrees to
27 undertake in settlement of an enforcement action but which the violator is not otherwise legally required to
28 perform.

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(4) This section applies to penalties assessed by the department of environmental quality or the district court under 82-4-141, 82-4-254, 82-4-361, and 82-4-441.

(5) The board of environmental review and the department of environmental quality may, for the statutes listed in subsection (4) for which each has rulemaking authority, adopt rules to implement this section."

Section 203. Section 82-15-102, MCA, is amended to read:

"82-15-102. Enforcement of part -- rules. (1) Except as provided in subsection (2), this part must be enforced by the department. It may adopt necessary and reasonable rules for the implementation of the provisions and intent of this part, and those rules have the effect of law.

(2) Section 82-15-110(8) must be enforced by the department of environmental quality.

(3) The board of environmental review department of environmental quality shall adopt rules for the regulation of methyl tertiary butyl ether in accordance with this part. The rules must establish:

(a) a trace level or trace levels of methyl tertiary butyl ether that may be contained in gasoline that is imported into the state, stored, distributed, sold, offered or exposed for sale, or dispensed in the state of Montana. The board department of environmental quality shall establish trace levels in a manner that prevents the intentional addition of methyl tertiary butyl ether to gasoline but that allows for a residual amount of methyl tertiary butyl ether to remain in tanks following implementation of 82-15-110(8).

(b) reasonable sampling and reporting requirements; and

(c) requirements that the board department of environmental quality determines are reasonable and necessary for implementation of the portions of this part that apply to methyl tertiary butyl ether."

Section 204. Section 82-15-120, MCA, is amended to read:

"82-15-120.—Department of environmental quality to enforce prohibition on methyl tertiary butyl ether—notice requirements—hearing—penalties. (1) (a) Whenever the department of environmental quality believes that a violation of 82-15-110(8) or of the rules adopted pursuant to 82-15-102(3) has occurred, it may serve written notice of the violation on the alleged violator or an agent of the alleged violator.

(b) The notice must specify the facts alleged to constitute a violation and may include an order assessing an administrative penalty pursuant to subsection (3), an order to take necessary corrective action

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~~within a reasonable period of time stated in the order, or both.~~

~~(c) The order becomes final unless, within 30 days after the notice is served, the person named in the order requests in writing a hearing before the board of environmental review department of environmental quality. Service by mail is complete on the date of mailing.~~

~~(d) Upon receipt of the request, the board of environmental review department of environmental quality shall schedule a hearing. The contested case provisions of the Montana Administrative Procedure Act provided in Title 2, chapter 4, part 6, apply to a hearing conducted under this section.~~

~~(2) If, after a hearing held under subsection (1), the board of environmental review department of environmental quality finds that a violation has occurred, it shall either affirm or modify the its order of the department of environmental quality. An order issued by the department of environmental quality or by the board of environmental review may prescribe the date by which the violation must cease and may prescribe time limits for a particular action. If, after hearing, the board of environmental review department of environmental quality finds no violation has occurred, it shall rescind the department of environmental quality's order.~~

~~(3) A violation of 82-15-110(8) or of a rule adopted pursuant to 82-15-102(3) is subject to an administrative penalty of up to \$1,000. Each day of violation constitutes a separate violation.~~

~~(4) Any person who violates 82-15-110(8), a rule adopted pursuant to 82-15-102(3), or an order issued under this section is subject to a civil penalty not to exceed \$5,000 for each violation. Each day of violation constitutes a separate violation.~~

~~(5) The department of environmental quality is authorized to commence a civil action seeking appropriate relief, including temporary and permanent injunctions and penalties under subsection (4) of this section, for a violation of 82-15-110(8), a rule adopted pursuant to 82-15-102(3), or a violation of an order issued under this section. The action must be brought in the district court of the first judicial district, Lewis and Clark County, or in the district court of the county in which the violation occurred."~~

NEW SECTION. Section 205. Repealer. The following sections of the Montana Code Annotated are repealed:

~~2-15-3502.—Board of environmental review;~~

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67th Legislature

Drafter: Joe Kolman, 406-444-3747

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1 ~~75-2-111. Powers of board.~~

2 75-6-103. Duties of board.

3 75-10-106. Duties of board.

4 82-4-111. Rules of board -- hearings.

5 82-4-204. Board rules.

6

7 ~~NEW SECTION. Section 206. —Name change—directions to code commissioner. Wherever a~~
8 ~~reference to the board of environmental review, meaning the board established in 2-15-3502, appears in~~
9 ~~legislation enacted by the 2021 legislature, the code commissioner is directed to change it to an appropriate~~
10 ~~reference to the department of environmental quality.~~

11

12 NEW SECTION. Section 207. Transition. Rulemaking authority and existing rules under the
13 jurisdiction of the board of environmental review are transferred to the department of environmental quality on
14 [the effective date of this act].

15

16 NEW SECTION. Section 208. Effective date. [This act] is effective July 1, 2021.

17

18

- END -



2021 Session

Additional Documents

May include the following:

- **Business Report**
- **Roll Call -Attendance**
- **Standing Committee Reports**
- **Tabled Bills**
- **Fiscal Reports**
- **Roll Call Votes**
- **Informational Item's**
- **Witness Statements**
- **Visitor Register**
- **Any other type of documents such as:**
 - Petitions, Pamphlets, Leaflets, Brochures, Emails, all documents given to Committee Secretary 24 hours after the meeting adjourned.**

The original exhibit/items are on file at the Montana Historical Society and may be viewed there.

BUSINESS REPORT
MONTANA SENATE
67th LEGISLATURE - REGULAR SESSION
SENATE NATURAL RESOURCES COMMITTEE

Date: Wednesday, February 24, 2021
Place: Capitol

Time: 2:45 PM
Room: 303

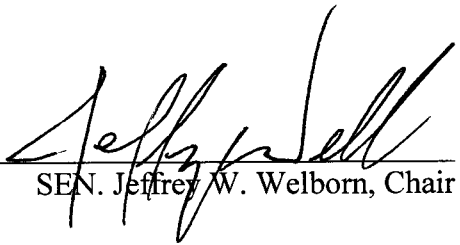
BILLS and RESOLUTIONS HEARD:

SB 284 - Generally revise county gravel pit permitting - Sen. Russel (Russ) Tempel (R)
SB 302 - Extend authorization deadline for use of navigable riverbed - Sen. Walt Sales (R)
SB 348 - Revise laws for use of reclaimed wastewater for snowmaking - Sen. Walt Sales (R)
SB 352 - Clarify objections to water rights - Sen. John Esp (R)
SB 358 - Repeal numeric nutrient standards for water quality - Sen. John Esp (R)

EXECUTIVE ACTION TAKEN:

SB 304 - Be Tabled
SB 371 - Be Tabled
SB 233 - Do Pass as Amended
SB 302 - Do Pass
SB 348 - Do Pass
SB 284 - Do Pass
SB 358 - Be Tabled

Comments:



SEN. Jeffrey W. Welborn, Chair

MONTANA STATE SENATE
Roll Call
NATURAL RESOURCES COMMITTEE

DATE: 2.24.21

<u>NAME</u>	<u>PRESENT</u>	<u>ABSENT/ EXCUSED</u>
VICE CHAIR SMALL	✓	
VICE CHAIR FLOWERS	✓	
SEN. ANKNEY	✓	
SEN. BROWN	✓	
SEN. COHENOUR	✓	
SEN. GILLESPIE	✓	
SEN. HOVEN	✓	
SEN. JACOBSON	✓	
SEN. LANG <i>entered late</i>		✓
SEN. LYNCH <i>entered late</i>		✓
SEN. POMNICHOWSKI	✓	
CHAIRMAN WELBORN	✓	
12 Committee Members		



SENATE STANDING COMMITTEE REPORT

February 24, 2021

Page 1 of 12

Mr. President:

We, your committee on **Natural Resources** report that **Senate Bill 233** (first reading copy -- white) **do pass as amended.**

Signed: _____

Senator Jeffrey W. Welborn, Chair

And, that such amendments read:

1. Title, line 7.

Following: "7-13-4517,"

Strike: "15-24-3001, 37-42-102, 37-42-321,"

2. Title, line 8

Following: "50-2-116,"

Strike: "50-79-401, 50-79-403, 75-1-220,"

Following: "75-1-1001,"

Strike: "75-2-103, 75-2-104,"

Following: "75-2-105,"

Insert: "75-2-111,"

3. Title, line 9.

Following: "75-2-212,"

Strike: "75-2-213,"

4. Title, line 10 through line 11.

Following: "75-2-302," on line 10

Strike: "75-2-401," on line 10 through "421," on line 11

5. Title, line 11.

Following: "75-2-422,"

Strike: "75-2-425, 75-2-426,"

Strike: "75-2-515,"

Following: "75-5-103,"

Strike: "75-5-105,"

Following: "75-5-201,"

Strike: "75-5-202,"

6. Title, line 13.

Following: "75-5-313,"

Strike: "75-5-314,"

Committee Vote:

Yes 12, No 0

Fiscal Note Required X

SB0233001SC.slk

Following: "75-5-402,"
Strike: "75-5-403, 75-5-404,"

7. Title, line 14.
Strike: "75-5-611," through "75-5-702,"
Following: "75-5-802,"
Strike: "75-6-102,"

8. Title, line 15.
Strike: "75-6-109,"
Strike: "75-6-113,"

9. Title, line 16.
Strike: "75-10-103,"
Strike: "75-10-203, 75-10-206,"

10. Title, line 16 through line 19.
Strike: "75-10-223," on line 16 through "75-11-503," on line 19

11. Title, 20.
Strike: "75-11-509," through "75-20-104,"

12. Title, line 20 through line 21.
Following: "75-20-105,"
Strike: "75-20-201," on line 20 through "75-20-215," on line 21

13. Title, line 21 through 22.
Strike: "75-20-219," on line 21 through "401," on line 22

14. Title, line 22.
Strike: "75-20-410, 75-20-411,"
Strike: "75-20-1202,"

15. Title, line 22 through line 23.
Strike: "75-26-301, 75-26-304,"

16. Title, line 23.
Strike: "76-4-102," through "76-4-126,"

17. Title, line 23.
Following: "76-4-1001,"
Strike: "80-15-102,"

18. Title, line 24.
Following: "82-4-102,"
Strike: "82-4-103,"

19. Title, line 24.
Following: "82-4-129,"
Strike: "82-4-130, 82-4-203,"
Following: "82-4-205,"
Strike: "82-4-206,"

20. Title, line 25.
Following: "82-4-226,"
Strike: "82-4-227,"
Following: "82-4-239,"
Strike: "82-4-251,"
Following: "82-4-254,"
Strike: "82-4-303,"

21. Title, line 26.

Following: "82-4-304,"
Strike: "82-4-305,"

22. Title, line 26 through line 27.
Following: "82-4-342,"
Strike: "82-4-353," on line 26 through "82-4-362," on line 27

23. Title, line 27.
Following: "82-4-371,"
Strike: "82-4-403,"
Following: "82-4-422,"
Strike: "82-4-427,"
Following: "82-4-437,"
Strike: "82-4-441, 82-4-442,"

24. Title, page 2, line 1.
Following: "4-1001,"
Insert: "AND"
Following: "82-15-102,"
Strike: "AND 82-15-120,"
Following: "MCA;"
Strike: "AND"
Following: "SECTIONS"
Strike: "2-15-3502, 75-2-111,"

25. Title, page 2, line 2.
Following: "MCA"
Insert: "AND PROVIDING AN EFFECTIVE DATE"

26. Page 4, line 10 through page 7, line 21.
Strike: sections 4 through 6 in their entirety
Renumber: subsequent sections

27. Page 10, line 7 through page 12, line 20.
Strike: sections 8 through 10 in their entirety
Renumber: subsequent sections

28. Page 13, line 25 through page 18, line 17.
Strike: sections 12 and 13 in their entirety
Renumber: subsequent sections

29. Page 19.
Following: line 7
Insert: **"Section 7.** Section 75-2-111, MCA, is amended to read:

"75-2-111. Powers of board. The board shall, subject to the provisions of 75-2-207:

~~(1) adopt, amend, and repeal rules for the administration, implementation, and enforcement of this chapter, for issuing orders under and in accordance with 42 U.S.C. 7419, and for fulfilling the requirements of 42 U.S.C. 7420 and regulations adopted pursuant to that section, except that, for purposes other than agricultural open burning, the board may not adopt permitting requirements or any other rule relating to:~~

~~(a) any agricultural activity or equipment that is associated with the use of agricultural land or the~~

~~planting, production, processing, harvesting, or storage of agricultural crops by an agricultural producer and that is not subject to the requirements of 42 U.S.C. 7475, 7503, or 7661a;~~

~~(b) a commercial operation relating to the activities or equipment referred to in subsection (1)(a) that remains in a single location for less than 12 months and is not subject to the requirements of 42 U.S.C. 7475, 7503, or 7661a; or~~

~~(c) forestry equipment and its associated engine used for forestry practices that remain in a single location for less than 12 months and are not subject to the requirements of 42 U.S.C. 7475, 7503, or 7661a;~~

~~(2)(1) hold hearings relating to any aspect of or matter in the administration of this chapter at a place designated by the board. The board may compel the attendance of witnesses and the production of evidence at hearings. The board shall designate an attorney to assist in conducting hearings and shall appoint a reporter who must be present at all hearings and take full stenographic notes of all proceedings, transcripts of which will be available to the public at cost.~~

~~(3)(2) issue orders necessary to effectuate the purposes of this chapter;~~

~~(4) by rule require access to records relating to emissions;~~

~~(5) by rule adopt a schedule of fees required for permits, permit applications, and registrations consistent with this chapter;~~

~~(6)(3) have the power to issue orders under and in accordance with 42 U.S.C. 7419."~~

30. Page 19, line 13.

Following: "chapter,"

Strike: "for issuing orders under and in accordance with 42 U.S.C. 7419"

31. Page 19, line 24 through line 28.

Strike: subsection (b) in its entirety

Renumber: subsequent sections

32. Page 20, line 2.

Following: "emissions;"

Insert: "and"

33. Page 20, line 4 through line 5.

Following: "chapter"

Strike: "i" on line 4 through "7419" on line 5

34. Page 20, line 8.

Following: "the"

Strike: "former"

Following: "board"

Strike: "of environmental review"

35. Page 22, line 4.
Strike: "shall"
Insert: "must"

36. Page 22, line 25.
Strike: "has obtained"
Insert: "obtains"

37. Page 23, line 4.
Following: "study"
Insert: "must"

38. Page 28, line 3.
Strike: "department"
Insert: "board"

39. Page 28, line 6.
Strike: "department"
Insert: "board"

40. Page 28, line 11.
Strike: "department"
Insert: "board"

41. Page 28, line 16.
Strike: "department"
Insert: "board"

42. Page 28, line 15.
Strike: "department"
Insert: "board"

43. Page 28, line 16.
Strike: "department"
Insert: "board"

44. Page 31, line 3 through page 33, line 12.
Strike: section 24 in its entirety
Renumber: subsequent sections

45. Page 33, line 16.
Strike: "has issued"
Insert: "issues"

46. Page 33, line 24.
Strike: "has provided"
Insert: "provides"

47. Page 34, line 9.
Strike: "has reached"
Insert: "reaches"

48. Page 34, line 12.
Strike: "has issued"
Insert: "issues"

49. Page 37, line 8.
Strike: "department"
Insert: "board"

50. Page 37, line 11.
Following: "all"
Strike: "of"

51. Page 38, line 12.
Strike: "department"
Insert: "board"

52. Page 38, line 14.
Following: "hearing"
Strike: "before the"

53. Page 38, line 15.
Following: "~~board~~"
Strike: "department"

54. Page 38, line 19.
Strike: "department"
Insert: "board"

55. Page 38, line 24.
Strike: "department"
Insert: "board"

56. Page 38, line 26.
Strike: "department"
Insert: "board"

57. Page 38, line 27.
Strike: "department"
Insert: "board"

58. Page 39, line 4.
Strike: "department"
Insert: "board"

59. Page 41, line 2.
Following: "~~board~~"
Strike: "department"

60. Page 41, line 28.
Following: "~~board~~"
Insert: "to the board"

61. Page 42, line 8.
Strike: "department"
Insert: "board"

62. Page 49, line 16 through page 53, line 20.
Strike: sections 35 through 38 in their entirety
Renumber: subsequent sections

63. Page 54, line 25 through page 55, line 19.
Strike: sections 40 and 41 in their entirety
Renumber: subsequent sections

64. Page 56, line 4 through page 57, line 5.
Strike: section 43 in its entirety
Renumber: subsequent sections

65. Page 57.
Following: line 24
Insert: "(3) "Board" means the board of environmental review provided for in
2-15-3502."
Renumber: subsequent subsections

66. Page 61, line 13.
Strike: "(29)(b)(iii)"
Insert: "(30)(b)(iii)"

67. Page 63.
Following: line 16
Insert: "(3) 'Board' means the board of environmental review provided for in
2-15-3502."
Renumber: subsequent subsections

68. Page 67, line 8.
Strike: "(29)(b)(iii) and (29)(b)(iv)"
Insert: "(30)(b)(iii) and (30)(b)(iv)"

69. Page 68, line 25 through page 69, line 10.
Strike: section 45 in its entirety
Renumber: subsequent sections

70. Page 69, line 13.
Following: "council"
Insert: ", board"

71. Page 69, line 19.
Following: "council"
Insert: ", board"

72. Page 70, line 10 through line 13.
Strike: section 48 in its entirety
Renumber: subsequent sections

73. Page 71, line 5.
Strike: "department"
Insert: "board"

74. Page 71, line 6.
Strike: "department"
Insert: "board"

75. Page 71, line 12.
Strike: "department"
Insert: "board"

76. Page 72, line 13.
Strike: "giving consideration to"
Insert: "considering"

77. Page 72, line 15.
Following: "Standards"
Strike: "adopted by the ~~board~~ department"

78. Page 75, line 12.
Strike: "department"
Insert: "board"

79. Page 75, line 18.
Strike: "department"
Insert: "board"

80. Page 79, line 3.
Strike: "department"
Insert: "board"

81. Page 79, line 4.
Strike: "department 's"
Insert: "board's"
82. Page 87, line 1 through line 14.
Strike: section 62 in its entirety
Renumber: subsequent sections
83. Page 97, line 13 through page 98, line 10.
Strike: section 68 and section 69 in their entirety
Renumber: subsequent sections
84. Page 101, line 4.
Strike: "department"
Insert: "board"
85. Page 101, line 11.
Strike: "department"
Insert: "board"
86. Page 101, line 26 through page 110, line 16.
Strike: sections 74 through 78 in their entirety
Renumber: subsequent sections
87. Page 111, line 1 through page 112, line 28.
Strike: Section 80 in its entirety
Renumber: subsequent sections
88. Page 115, line 2.
Following: "department"
Insert: "or the board"
89. Page 117, line 4.
Strike: "department"
Insert: "board"
90. Page 117, line 25.
Following: "~~board~~"
Insert: "to the board"
91. Page 118, line 3 through page 119, line 6.
Strike: section 86 in its entirety
Renumber: subsequent sections
92. Page 119, line 20 through line 24.
Strike: section 88 in its entirety
Renumber: subsequent sections
93. Page 122, line 5 through page 123, line 10.
Strike: section 92 in its entirety
Renumber: subsequent sections
94. Page 127, line 3 through page 129, line 9.
Strike: Sections 96 and 97 in their entirety
Renumber: subsequent sections
95. Page 130, line 1 through page 157, line 18.
Strike: Section 99 through section 127 in their entirety
Renumber: subsequent sections
96. Page 159, line 7.

Following: "considered"
Strike: "to be"

97. Page 159, line 16 through page 168, line 10.
Strike: Section 130 through section 135 in their entirety
Renumber: subsequent sections

98. Page 168, line 16 through page 172, line 28.
Strike: section 137 through section 141 in their entirety
Renumber: subsequent sections

99. Page 174, line 17 through page 183, line 20.
Strike: section 143 through section 148 in their entirety
Renumber: subsequent sections

100. Page 183, line 23.
Following: "~~board~~"
Strike: "department"

101. Page 183, line 24.
Following: "department"
Insert: "or board"

102. Page 184, line 14.
Following: "~~board~~"
Insert: "board or"

103. Page 184, line 16.
Following: "issued"
Strike: "hereunder"

104. Page 184, line 19 through page 185, line 9.
Strike: section 151 and section 152 in their entirety
Renumber: subsequent sections

105. Page 185, line 24 through page 186, line 6.
Strike: section 154 in its entirety
Renumber: subsequent sections

106. Page 187, line 17 through page 191, line 20.
Strike: section 157 and 158 in their entirety
Renumber: subsequent sections

107. Page 193, line 28 through page 197, line 15.
Strike: section 160 through section 162 in their entirety
Renumber: subsequent sections

108. Page 198, line 20 through page 200, line 20.
Strike: section 164 in its entirety
Renumber: subsequent sections

109. Page 202, line 16.
Following: "board"
Strike: "of environmental review"

110. Page 202, line 18.
Strike: "department of environmental quality"
Insert: "board"

111. Page 202, line 19.
Strike: "department of environmental quality"
Insert: "board"

112. Page 202, line 20.

Strike: "it"

Insert: "the department"

113. Page 202, line 23 through line 24.

Strike: "department" on line 23 through "quality" on line 14

Insert: "board"

114. Page 202, line 25.

Strike: "department of environmental quality"

Insert: "board"

115. Page 202, line 26.

Following: "board"

Strike: "of environmental review"

116. Page 205, line 13 through page 206, line 14.

Strike: Section 169 in its entirety

Renumber: subsequent sections

117. Page 207, line 8.

Strike: "department"

Insert: "board"

118. Page 208, line 2.

Following: "department"

Insert: "and the board"

119. Page 208, line 4.

Strike: "department"

Insert: "board"

120. Page 208, line 15 through page 216, line 16.

Strike: Sections 173 and 174 in their entirety

Renumber: subsequent sections

121. Page 216, line 19.

Following: "**department**"

Insert: "**and board**"

122. Page 217, line 14.

Strike: "(i) shall conduct contested case hearings under this part;"

Renumber: subsequent subsections

123. Page 217, line 18.

Following: "~~part.~~"

Insert: "(2) The board shall conduct contested case hearings under this part."

124. Page 217, line 20 through page 3.

Strike: section 176 in its entirety

Renumber: subsequent sections

125. Page 222, line 12 through page 226, line 24.

Strike: section 180 in its entirety

Renumber: subsequent sections

126. Page 229, line 24.

Strike: "record"

Insert: "notify the board"

127. Page 229, line 28.

Strike: "department"
Insert: "board"

128. Page 230, line 1
Strike: "department"
Insert: "board"

129. Page 244, line 6 through page 247, line 2.
Strike: section 186 in its entirety
Renumber: subsequent sections

130. Page 248, line 6.
Strike: "department"
Insert: "board"

131. Page 248, line 6.
Following: the second "~~board~~"
Strike: "department"
Insert: "board"

132. Page 248, line 8.
Strike: "department"
Insert: "board"

133. Page 248, line 10.
Strike: "department" in two places
Insert: "board" in two places

134. Page 248, line 12.
Strike: "department"
Insert: "board"

135. Page 250, line 2 through page 255, line 10.
Strike: section 188 in its entirety
Renumber: subsequent sections

136. Page 255, line 22 through page 260, line 9.
Strike: section 190 in its entirety
Renumber: subsequent sections

137. Page 268, line 3.
Strike: "department"
Insert: "board"

138. Page 268, line 11.
Strike: "department"
Insert: "board"

139. Page 268, line 13.
Strike: "department"
Insert: "board"

140. Page 270, line 20.
Following: "may"
Strike: "thereafter"

141. Page 274, line 8 through page 277, line 22.
Strike: section 198 through section 200 in their entirety
Renumber: subsequent sections

142. Page 279, line 13 through page 281, line 8.
Strike: section 202 in its entirety

Renumber: subsequent sections

143. Page 282, line 7.

Strike: "; and"

Insert: "."

144. Page 282, line 8.

Strike: "(c)"

Insert: "(3) The board shall"

145. Page 282, line 13 through page 283, line 17.

Strike: section 205 in its entirety

Renumber: subsequent sections

146. Page 284, line 13 through page 287, line 3.

Strike: sections 207 and 208 in their entirety

Renumber: subsequent sections

147. Page 290, line 13 through page 291, line 15.

Strike: section 212 in its entirety

Renumber: subsequent sections

148. Page 291, line 19 through line 20.

Strike: lines 19 and 20 in their entirety

149. Page 291, line 26 through page 292, line 1.

Strike: section 214 in its entirety

Insert: "NEW SECTION. Section 207. Transition. Rulemaking authority and existing rules under the jurisdiction of the board of environmental review are transferred to the department of environmental quality on [the effective date of this act].

NEW SECTION. Section 208. Effective date. [This act] is effective July 1, 2021."

- END -



SENATE STANDING COMMITTEE REPORT

February 24, 2021

Page 1 of 1

Mr. President:

We, your committee on **Natural Resources** report that **Senate Bill 302** (first reading copy -- white) **do pass**.

Signed: _____

Senator Jeffrey W. Welborn, Chair

- END -

Committee Vote:

Yes 11, No 0

Fiscal Note Required X

SB0302001SC.slk



SENATE STANDING COMMITTEE REPORT

February 24, 2021

Page 1 of 1

Mr. President:

We, your committee on **Natural Resources** report that **Senate Bill 348** (first reading copy -- white) **do pass**.

Signed: _____

Senator Jeffrey W. Welborn, Chair

- END -

Committee Vote:

Yes 11, No 0

Fiscal Note Required ☐

SB0348001SC.slk



SENATE STANDING COMMITTEE REPORT

February 24, 2021

Page 1 of 1

Mr. President:

We, your committee on **Natural Resources** report that **Senate Bill 284** (first reading copy -- white) **do pass**.

Signed: _____

Senator Jeffrey W. Welborn, Chair

- END -

Committee Vote:

Yes 7, No 5

Fiscal Note Required X

SB0284001SC.slk

COMMITTEE FILE COPY

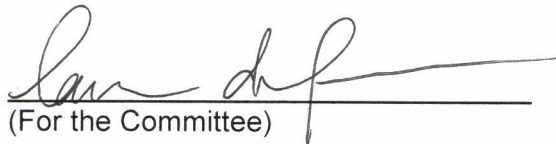
BILL TABLED NOTICE

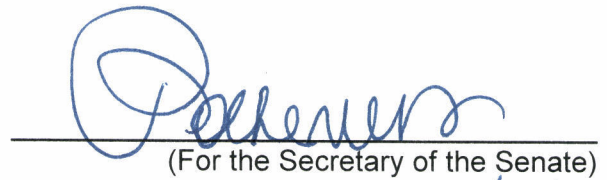
SENATE NATURAL RESOURCES COMMITTEE

The **SENATE NATURAL RESOURCES COMMITTEE** TABLED

SB 304 - Revise establishment of stock water rights on federal land - Sen. Mike Lang (R)
SB 358 - Repeal numeric nutrient standards for water quality - Sen. John Esp (R)
SB 371 - Repeal CSKT water rights compact - Sen. Bob Keenan (R)

by motion, on **Wednesday, February 24, 2021** (PLEASE USE THIS ACTION DATE IN LAWS BILL STATUS).


(For the Committee)


(For the Secretary of the Senate)
6:15p / 2/24
(Time) (Date)

February 24, 2021 (6:10pm)

Lauren de Paepe, Secretary

Phone: 444-4618

MONTANA STATE SENATE
Roll Call Vote
NATURAL RESOURCES COMMITTEE

DATE 2-24-21 BILL NO SB 233 MOTION NO. _____

MOTION: do pass as amended

<u>NAME</u>	AYE	NO	Proxy
VICE CHAIR SMALL	✓		
VICE CHAIR FLOWERS	✓		
SEN. ANKNEY	✓		
SEN. BROWN	✓		
SEN. COHENOUR	✓		
SEN. GILLESPIE	✓		
SEN. HOVEN	✓		
SEN. JACOBSON	✓		
SEN. LANG	✓		
SEN. LYNCH	✓		✓
SEN. POMNICHOWSKI	✓		
CHAIRMAN WELBORN	✓		
12 COMMITTEE MEMBERS	12		

MONTANA STATE SENATE
Roll Call Vote
NATURAL RESOURCES COMMITTEE

DATE 2.24.21 BILL NO SB 284 MOTION NO. _____

MOTION: Do pass

<u>NAME</u>	<u>AYE</u>	<u>NO</u>	<u>Proxy</u>
VICE CHAIR SMALL	✓		✓
VICE CHAIR FLOWERS		✓	
SEN. ANKNEY	✓		✓
SEN. BROWN	✓		
SEN. COHENOUR		✓	
SEN. GILLESPIE	✓		
SEN. HOVEN	✓		
SEN. JACOBSON		✓	
SEN. LANG	✓		✓
SEN. LYNCH		✓	
SEN. POMNICHOWSKI		✓	
CHAIRMAN WELBORN	✓		
12 COMMITTEE MEMBERS	7	5	

MONTANA STATE SENATE
Roll Call Vote
NATURAL RESOURCES COMMITTEE

DATE 2-24-21 BILL NO SB358 MOTION NO. _____

MOTION: Be tabled

<u>NAME</u>	AYE	NO	Proxy
VICE CHAIR SMALL		✓	✓
VICE CHAIR FLOWERS	✓		
SEN. ANKNEY		✓	✓
SEN. BROWN		✓	
SEN. COHENOUR	✓		
SEN. GILLESPIE		✓	
SEN. HOVEN	✓		
SEN. JACOBSON	✓		
SEN. LANG		✓	✓
SEN. LYNCH	✓		
SEN. POMNICHOWSKI	✓		
CHAIRMAN WELBORN	✓		
12 COMMITTEE MEMBERS	7	5	

SENATE PROXY

I, Senator Michelle Kang, hereby authorize Senator Haven Fluelman to vote my proxy before the Senate Natural Resources meeting held on _____, 2021.

Senator Signature

Date _____

Said authorization is as follows: *(mark only one)*

- ☐ All votes, including amendments.
- ☐ All votes as directed below on the listed bills, and all other votes.
- ☐ Votes only as directed below.

[illegible]

SENATE PROXY

I, Senator Small, hereby authorize Senator Welborn to vote my proxy before the Senate Natural Resources meeting held on February 24, 2021.



Senator Signature

2/24/21
Date

Said authorization is as follows: *(mark only one)*

- ☐ All votes, including amendments.
- ☐ All votes as directed below on the listed bills, and all other votes.
- ☒ Votes only as directed below.

[illegible]

SENATE PROXY

I, Senator Ankney, hereby authorize Senator Welborn to vote my proxy before the Senate Natural Resources meeting held on February 24, 2021.



Senator Signature

2-24-21
Date

Said authorization is as follows: *(mark only one)*

- ☐ All votes, including amendments.
- ☐ All votes as directed below on the listed bills, and all other votes.
- ☒ Votes only as directed below.

[illegible]

SENATE PROXY

I, Senator Ryan Lynch, hereby authorize Senator
Jacobson & Flowers to vote my proxy before the Senate
Natural Resources meeting held on 2 - 24, 2021.

Senator Signature

Date

Said authorization is as follows: *(mark only one)*

- ☐ All votes, including amendments.
- ☐ All votes as directed below on the listed bills, and all other votes.
- ☒ Votes only as directed below.

[illegible]

SENATE NATURAL RESOURCES COMMITTEE

Sponsor: **Sen. John Esp (R)**

[illegible]

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

SENATE NATURAL RESOURCES COMMITTEE

Sponsor: **Sen. John Esp (R)**

PLEASE PRINT

[illegible]

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

SENATE NATURAL RESOURCES COMMITTEE

Sponsor: **Sen. Russel (Russ) Tempel (R)**

[illegible]

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

SENATE NATURAL RESOURCES COMMITTEE

Sponsor: **Sen. Walt Sales (R)**

[illegible]

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

Public Comment Requests
Senate Natural Resources
Meeting Date: 02/24/2021 Meeting Time: 3:00 pm

Bill	Position	Name	Affiliation	Location	Email
SB-284	Opponents	Amy Seaman	Montana Audubon	Helena	aseaman@mtaudubon.org
		Ed Coleman	MT Dept. of Environmental Quality	Helena	ecoleman@mt.gov
		Mike Newton	Fisher Sand & Gravel Co.	Glendive	mnewton@fisherind.com
	Informational Witnesses	Christopher Cronin	MT Dept. of Environmental Quality	Helena	ccronin@mt.gov

Bill	Position	Name	Affiliation	Location	Email
SB-302	Informational Witnesses	Shawn Thomas	DNRC	Helena	sthomas@mt.gov
		Brian Bramblett	MT. Dept of Natural Resources & Conservation	Helena	bbramblett@mt.gov

Bill	Position	Name	Affiliation	Location	Email
SB-348	Informational Witnesses	Millie Heffner	DNRC	Helena	mheffner@mt.gov
		Laura Rennick	DNRC	Helena	lrennick@mt.gov
		Kevin Smith	DEQ	Helena	ksmith@mt.gov

Bill	Position	Name	Affiliation	Location	Email
SB-352	Proponent	Alan Redfield		Livingston	redfield4mt@gmail.com
	Opponents	Andrew Gorder	Clark Fork Coalition		andrew@clarkfork.org
	Informational Witnesses	Millie Heffner	DNRC	Helena	mheffner@mt.gov
		Anna Pakenham Stevenson		Helena	anna.pakenhamstevenson@mt.gov

Bill	Position	Name	Affiliation	Location	Email
SB-358	Proponent	Tim Burton	Mt. League of Cities and Towns	Helena	tim.burton@mtleague.net
	Opponents	Jerry Iverson	Cottonwood Resource Council	Big Timber	JLiverson@outlook.com
		Bill Muldoon			muldoonwj@gmail.com
		Andrew Gorder	Clark Fork Coalition		andrew@clarkfork.org
		Sarah Zuzulock			Sarah@zuzulockenvironmental.com
		Betsy Baxter			mebaxter@hotmail.com
		Paul Hawks			hawk@mtintouch.net (undeliverable email)

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 67th LEGISLATURE - REGULAR SESSION

COMMITTEE ON NATURAL RESOURCES

Call to Order: Chair Steve Gunderson, on March 26, 2021 at 3:40 PM, in Room 172
Capitol

ROLL CALL

Members Present:

Rep. Steve Gunderson, Chair (R)
Rep. Willis Curdy, Vice Chair (D)
Rep. Rhonda Knudsen, Vice Chair (R)
Rep. Robert Farris-Olsen (D)
Rep. Paul Fielder (R)
Rep. Ross H. Fitzgerald (R)
Rep. Tom France (D)
Rep. Steven Galloway (R)
Rep. Steve Gist (R)
Rep. Marty Malone (R)
Rep. Marilyn Marler (D)
Rep. Brian Putnam (R)
Rep. Kenneth Walsh (R)

Members Excused:

Rep. Mark Noland (R)
Rep. Marvin Weatherwax (D)

Members Absent: None

Staff Present:

Jacquelynn Bomgardner, Committee Secretary
Joe Kolman, Legislative Branch
Rachael Foe, Remote Meeting Coordinator

Audio Committees: These minutes are in outline form only. They provide a list of participants and a record of official action taken by the committee. The link to the audio recording of the meeting is available on the Legislative Branch website.

Committee Business Summary:

Hearing & Date Posted: SB 233, 3/12/2021; SB 258, 3/24/2021
Executive Action on: SB 258

15:40:14 Rep. Putnam left the meeting.

15:40:23 Rep. France left the meeting.

HEARING ON SB 258

Opening Statement by Sponsor:

15:40:44 Sen. Duane Ankney (R), SD 20, opened the hearing on SB 258, Renaming the Treasure State Endowment program.

Proponents' Testimony:

15:42:25 Shelby DeMars, Montana Associations of Oil Gas and Coal Counties (MAOGCC)

[EXHIBIT\(nah60a01\)](#)

15:43:19 Leo Berry, self

[EXHIBIT\(nah60a02\)](#)

[EXHIBIT\(nah60a03\)](#)

15:48:02 Rep. Galloway left the meeting.

15:49:18 Molly Schwend, Montana Coal Council (MCC)

15:50:32 Peggy Trenk, Treasure State Resources Association (TSRA)

15:51:05 Charles Robison, Montana Electric Cooperatives' Association (MECA)

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses: None

Closing by Sponsor:

15:52:16 Sen. Ankney

HEARING ON SB 233

Opening Statement by Sponsor:

15:53:32 Sen. Duane Ankney (R), SD 20, opened the hearing on SB 233, Generally revise the board of environmental review.

Proponents' Testimony:

15:54:57 Peggy Trenk, Treasure State Resources Association (TSRA)

15:56:46 Rep. France rejoined the meeting.

15:58:09 Alan Olson, Montana Petroleum Association (MPA)

16:00:21 Shelby DeMars, Montana Associations of Oil Gas and Coal Counties (MAOGCC)

16:00:56 Molly Schwend, Montana Coal Council (MCC)

Opponents' Testimony: None

Informational Testimony:

16:01:48 Director Chris Dorrington, Department of Environmental Quality (DEQ)

16:02:23 David Klemp, Department of Environmental Quality (DEQ)

16:03:04 Angie Colamaria, Department of Environmental Quality (DEQ)

Questions from Committee Members and Responses:

16:03:31 Rep. Gist
16:04:04 Director Dorrington, DEQ
16:04:18 Vice Chair Curdy
16:04:37 Director Dorrington, DEQ
16:05:19 Rep. Fitzgerald
16:06:00 Director Dorrington, DEQ
16:06:20 Rep. Galloway rejoined the meeting.
16:08:18 Chair Gunderson
16:08:59 Angie Colamaria, DEQ
16:09:30 Chair Gunderson
16:10:03 Vice Chair R. Knudsen
16:10:26 Joe Kolman, Legislative Services Division (LSD)
16:10:45 Chair Gunderson

Closing by Sponsor:

16:11:19 Sen. Ankney

16:12:27 Chair Gunderson
16:13:08 Vice Chair Curdy

EXECUTIVE ACTION ON SB 258

16:13:29 **Motion/Vote:** Rep. R. Knudsen moved that **SB 258 BE CONCURRED IN.**
Motion carried unanimously by voice vote. Rep. Noland, Rep. Putnam and Rep.
Weatherwax voted by proxy. Rep. Malone will carry the bill.

ADJOURNMENT

Adjournment: 16:14:32

Jacquelynn Bomgardner, Secretary

jb

Additional Documents:

EXHIBIT([nah60aad.pdf](#))



2021 Session

Additional Documents

May include the following:

- **Business Report**
- **Roll Call - Attendance**
- **Standing Committee Reports**
- **Tabled Bills**
- **Fiscal Reports**
- **Roll Call Votes**
- **Informational Item's**
- **Witness Statements**
- **Visitor Register**
- **Any other type of documents such as:**
 - Petitions, Pamphlets, Leaflets, Brochures, Emails, all documents given to Committee Secretary 24 hours after the meeting adjourned.**

The original exhibit/items are on file at the Montana Historical Society and may be viewed there.

BUSINESS REPORT

**MONTANA HOUSE OF REPRESENTATIVES
67th LEGISLATURE - REGULAR SESSION**

HOUSE NATURAL RESOURCES COMMITTEE

Date: Friday, March 26, 2021

Place: Capitol

Time: 3:00 PM

Room: 172

BILLS and RESOLUTIONS HEARD:

SB 233 - Generally revise the board of environmental review - Sen. Duane Ankney (R)

SB 258 - Renaming the Treasure State Endowment program - Sen. Duane Ankney (R)

EXECUTIVE ACTION TAKEN:

SB 258 - Be Concurred In

Comments:

A handwritten signature in black ink, appearing to read 'Steve Gunderson', is written over a horizontal line.

REP. Steve Gunderson, Chair



The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

NATURAL RESOURCES COMMITTEE

ROLL CALL

DATE: 3-26-2021

NAME	PRESENT	ABSENT/EXCUSED
CHAIR GUNDERSON	✓	
VICE CHAIR RHONDA KNUDSEN	✓	
VICE CHAIR CURDY	✓	
REP. FARRIS-OLSEN	✓	
REP. FIELDER	✓	
REP. FITZGERALD	✓	
REP. FRANCE	✓	
REP. GALLOWAY	✓	
REP. GIST	✓	
REP. MALONE	✓	
REP. MARLER	✓	
REP. NOLAND		✓
REP. PUTNAM	✓	
REP. WALSH	✓	
REP. WEATHERWAX		✓

15 MEMBERS



HOUSE STANDING COMMITTEE REPORT

March 26, 2021

Page 1 of 1

Mr. Speaker:

We, your committee on **Natural Resources** recommend that **Senate Bill 258** (second house second reading copy -- tan) **be concurred in.**

Signed: _____

Representative Steve Gunderson, Chair

To be carried by Representative Marty Malone

- END -

Committee Vote:

Yes 15, No 0

Fiscal Note Required ☐

SB0258001SC19679.hlc

3.29.21
11:49 AM
(P)



The Big Key Country

MONTANA HOUSE OF REPRESENTATIVES
 AUTHORIZED
 COMMITTEE PROXY
 67TH LEGISLATIVE SESSION

I request to be excused from the Natural Resources Committee.

I desire to leave my proxy vote with Rep. FITZGERALD.

PLEASE USE PEN

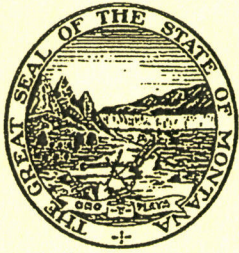
[illegible]

I authorize my vote to be matched with that of Rep. FITZGERALD
for any amendments proposed on this date.

Rep. Tim Latta
(Signature)

Rep Putnam
(Print Name)

3/26/21
(Meeting Date)



The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES
AUTHORIZED
COMMITTEE PROXY
67TH LEGISLATIVE SESSION

I request to be excused from the Natural Resources Committee.

I desire to leave my proxy vote with Rep. Rhonda Knudsen.

PLEASE USE PEN

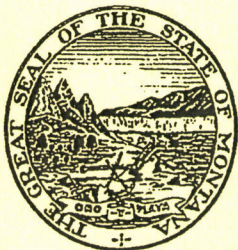
BILL	MOTION (Include AMENDMENT #)	AYE	NO	BILL	MOTION (Include AMENDMENT #)	AYE	NO
SB258	Do Concur	✓					

I authorize my vote to be matched with that of Rep. Rhonda Knudsen
for any amendments proposed on this date.

Rep. Mark Noland
(Signature)

Rep. Noland
(Print Name)

3-26-2021
(Meeting Date)



The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES
AUTHORIZED
COMMITTEE PROXY
67TH LEGISLATIVE SESSION

I request to be excused from the Natural Resources Committee.

I desire to leave my proxy vote with Rep. Wells Cindy

PLEASE USE PEN

BILL	MOTION (Include AMENDMENT #)	AYE	NO
SB258	Do Pass	X	

BILL	MOTION (Include AMENDMENT #)	AYE	NO

I authorize my vote to be matched with that of Rep. Curdy
for any amendments proposed on this date.

Rep.

(Signature)

Marvin Weatherly
Rep. Curdy
(Print Name)

(Meeting Date)

3-26-2021



2021 Legislative Session

WITNESS STATEMENTS

**The following is an assortment of
documents that are witness
statements.**

**“A witness statement is a signed document
recording the evidence of a witness. A
definition “a written statement signed by a
person which contains the evidence which that
person would be allowed to give orally.”**

LEG Committee-House Natural Resource testimony

From: leg-noreply@mt.gov
Sent: Thursday, March 25, 2021 11:34 AM
To: LEG Applications Email Backup; LEG Committee-House Natural Resource testimony
Subject: Public Comment for Bill SB-233: Generally revise the board of environmental review
2021-03-26 03:00 PM - (H) Natural Resources Successfully Submitted on 03-25-21 11:34

Details:

Bill: SB-233: Generally revise the board of environmental review 2021-03-26 03:00 PM - (H) Natural Resources

Position: Opponent

Representing an Entity/Another Person: Yes

Organization: League of Women Voters Montana

Name: Nancy Leifer

Email: nancleifer@gmail.com

Phone: (406) 207-9114

City, State: Missoula, Montana

Written Statement: The League of Women Voters of Montana believes that democratic government depends upon informed and active participation at all levels of government.

Natural resources should be managed as interrelated parts of life-supporting ecosystems. Resources should be conserved and protected to assure their future availability. Pollution of these resources should be controlled in order to preserve the physical, chemical, and biological integrity of ecosystems and to protect public health.

Montana's Environmental Review Board provides both of these things and helps ensure that Montana's environment is protected, as called for in our 1972 Constitution.

As a citizen oversight board, it is also an important tool through which everyday Montanans have more access to government and say in state decision-making. Under SB 233, this Board would be eliminated, putting its functions into the hands of political appointees rather than a board of appointed citizens. Clean water, health, and public participation in government decisions are values we all share. By seeking to abolish the BER, Senate Bill 233 is a direct threat to all of them.

The League of Women Voters asks you to reject SB 233. Thank you for this opportunity to submit testimony.

Files:

Testify via Zoom: No

Zoom Method: N/A

MONTANA House of Representatives Visitors Register

Friday, March 26, 2021

SB 258 - Renaming the Treasure State Endowment program

Sponsor: **Sen. Duane Ankney (R)**

PLEASE PRINT

[illegible]

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

House Natural Resources Committee Testimony Requests					Meeting: 03/26/2021
Bill	Name	Position	Location	Email	Affiliation
SB-233	Angela Colamaria	Informational Witness	Helena	angela.colamaria@mt.gov	DEQ

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 67th LEGISLATURE - REGULAR SESSION

COMMITTEE ON NATURAL RESOURCES

Call to Order: Chair Steve Gunderson, on March 29, 2021 at 3:00 PM, in Room 172
Capitol

ROLL CALL

Members Present:

Rep. Steve Gunderson, Chair (R)
Rep. Willis Curdy, Vice Chair (D)
Rep. Rhonda Knudsen, Vice Chair (R)
Rep. Paul Fielder (R)
Rep. Ross H. Fitzgerald (R)
Rep. Tom France (D)
Rep. Steven Galloway (R)
Rep. Steve Gist (R)
Rep. Marty Malone (R)
Rep. Brian Putnam (R)
Rep. Kenneth Walsh (R)
Rep. Marvin Weatherwax (D)

Members Excused:

Rep. Robert Farris-Olsen (D)
Rep. Marilyn Marler (D)
Rep. Mark Noland (R)

Members Absent: None

Staff Present:

Jacquelynn Bomgardner, Committee Secretary
Joe Kolman, Legislative Branch
Rachael Foe, Remote Meeting Coordinator

Audio Committees: These minutes are in outline form only. They provide a list of participants and a record of official action taken by the committee. The link to the audio recording of the meeting is available on the Legislative Branch website.

Committee Business Summary:

Hearing & Date Posted: HB 648, 3/24/2021; SB 358, 3/12/2021
Executive Action on: SB 29; SB 40; SB 136; SB 165; SB 233; SB 249; SB 328; SB 348;
SB 352

14:45:26 Chair Gunderson
14:45:47 Recess
15:15:45 Reconvened

EXECUTIVE ACTION ON SB 29

15:16:23 **Motion:** Rep. R. Knudsen moved that **SB 29 BE CONCURRED IN.**

Discussion:

15:16:33 Joe Kolman, Legislative Services Division (LSD)

15:17:20 **Motion/Vote:** Rep. Fitzgerald moved that **SB 29 BE AMENDED.** Motion carried unanimously by voice vote. Rep. Marler and Rep. Noland voted by proxy.

EXHIBIT(nah61a01)

15:18:44 Rep. Farris-Olsen joined the meeting.

15:19:22 **Motion:** Rep. R. Knudsen moved that **SB 29 BE CONCURRED IN AS AMENDED.**

Discussion:

15:19:38 Rep. Putnam

15:20:00 **Substitute Motion/Vote:** Rep. R. Knudsen made a substitute motion that **SB 29 BE TABLED.** Substitute Motion carried 10-5 by roll call vote with Rep. Fitzgerald, Rep. France, Rep. Gunderson, Rep. Putnam and Rep. Walsh voting no. Rep. Marler and Rep. Noland voted by proxy.

EXECUTIVE ACTION ON SB 40

15:21:35 **Motion/Vote:** Rep. R. Knudsen moved that **SB 40 BE CONCURRED IN.** Motion carried unanimously by voice vote. Rep. Marler and Rep. Noland voted by proxy. Rep. Curdy will carry the bill.

EXECUTIVE ACTION ON SB 136

15:22:48 **Motion/Vote:** Rep. R. Knudsen moved that **SB 136 BE CONCURRED IN.** Motion carried unanimously by voice vote. Rep. Marler and Rep. Noland voted by proxy. Rep. Galloway will carry the bill.

EXECUTIVE ACTION ON SB 165

15:24:27 **Motion:** Rep. R. Knudsen moved that **SB 165 BE CONCURRED IN.**

Discussion:

15:24:42 Vice Chair R. Knudsen
15:25:39 Joe Kolman, LSD
15:28:54 Chair Gunderson

15:29:10 **Motion:** Rep. R. Knudsen moved that **SB 165 BE AMENDED.**
[EXHIBIT](#)(nah61a02)

Discussion:

15:29:39 Rep. Putnam

15:30:11 **Vote:** Motion carried 14-1 by voice vote with Rep. France voting no. Rep. Marler and Rep. Noland voted by proxy.

15:30:41 **Motion:** Rep. R. Knudsen moved that **SB 165 BE AMENDED.**
[EXHIBIT](#)(nah61a03)

Discussion:

15:30:55 Rep. Walsh

15:31:19 **Vote:** Motion carried unanimously by voice vote. Rep. Marler and Rep. Noland voted by proxy.

15:31:39 **Motion:** Rep. R. Knudsen moved that **SB 165 BE CONCURRED IN AS AMENDED.**

15:31:53 **Substitute Motion/Vote:** Rep. Putnam made a substitute motion that **SB 165 BE TABLED.** Substitute Motion carried 8-7 by roll call vote with Rep. Fielder, Rep. Galloway, Rep. Gist, Rep. Gunderson, Rep. R. Knudsen, Rep. Malone and Rep. Noland voting no. Rep. Marler and Rep. Noland voted by proxy.

EXECUTIVE ACTION ON SB 233

15:33:34 **Motion/Vote:** Rep. R. Knudsen moved that **SB 233 BE CONCURRED IN.** Motion carried 14-1 by voice vote with Rep. Putnam voting no. Rep. Marler and Rep. Noland voted by proxy. Rep. Putnam will carry the bill.

EXECUTIVE ACTION ON SB 249

15:35:28 **Motion/Vote:** Rep. R. Knudsen moved that **SB 249 BE CONCURRED IN.** Motion carried unanimously by voice vote. Rep. Marler and Rep. Noland voted by proxy. Rep. Knudsen will carry the bill.

EXECUTIVE ACTION ON SB 328

15:36:54 **Motion:** Rep. R. Knudsen moved that **SB 328 BE CONCURRED IN.**

Discussion:

15:37:10 Vice Chair R. Knudsen
 15:37:35 Joe Kolman, LSD
 15:38:56 Rep. Malone
 15:39:17 Joe Kolman, LSD
 15:39:44 Vice Chair Curdy
 15:39:53 Rep. France

15:41:25 **Motion/Vote:** Rep. Curdy moved that **SB 328 BE AMENDED**. Motion carried 8-7 by roll call vote with Rep. Fielder, Rep. Galloway, Rep. Gunderson, Rep. R. Knudsen, Rep. Malone, Rep. Noland and Rep. Walsh voting no. Rep. Marler and Rep. Noland voted by proxy.

EXHIBIT(nah61a04)

15:43:29 **Motion:** Rep. R. Knudsen moved that **SB 328 BE CONCURRED IN AS AMENDED**.

Discussion:

15:43:43 Rep. Malone
15:44:00 Rep. Walsh
15:44:24 Vice Chair Curdy
15:45:12 Rep. France
15:46:05 Vice Chair Curdy

15:46:17 **Vote:** Motion carried 12-3 by roll call vote with Rep. Fielder, Rep. Gunderson and Rep. Malone voting no. Rep. Marler and Rep. Noland voted by proxy. Rep. France will carry the bill.

EXECUTIVE ACTION ON SB 348

15:47:45 **Motion/Vote:** Rep. R. Knudsen moved that **SB 348 BE CONCURRED IN**. Motion carried unanimously by voice vote. Rep. Marler and Rep. Noland voted by proxy. Rep. Walsh will carry the bill.

EXECUTIVE ACTION ON SB 352

15:49:14 **Motion:** Rep. R. Knudsen moved that **SB 352 BE CONCURRED IN**.

Discussion:

15:49:21 Vice Chair R. Knudsen
15:49:49 Joe Kolman, LSD

15:51:20 **Motion/Vote:** Rep. R. Knudsen moved that **SB 352 BE AMENDED**. Motion carried 13-2 by voice vote with Rep. R. Knudsen and Rep. Noland voting no. Rep. Marler and Rep. Noland voted by proxy.

EXHIBIT(nah61a05)

15:52:14 **Motion/Vote:** Rep. Curdy moved that **SB 352 BE TABLED**. Motion carried 11-4 by roll call vote with Rep. Fielder, Rep. Fitzgerald, Rep. Galloway and Rep. Malone voting no. Rep. Marler and Rep. Noland voted by proxy.

HEARING ON HB 648

Opening Statement by Sponsor:

15:54:12 Rep. Joshua Kassmier (R), HD 27, opened the hearing on HB 648, Generally revise natural resource laws.

Proponents' Testimony:

15:56:17 Tony O'Donnell, Montana Public Service Commission (PSC)

Opponents' Testimony:

15:58:05 Amy Seaman, Montana Audubon
15:58:48 Derf Johnson, Montana Environmental Information Center (MEIC)
15:59:00 Rep. Farris-Olsen left the meeting.
16:02:40 Charles Sangmeister, self

Informational Testimony:

16:01:55 John Metesh, Montana Bureau of Minds and Geology (MBMG)

Questions from Committee Members and Responses:

16:04:15 Rep. Malone
16:04:37 Rep. Kassmier

Closing by Sponsor:

16:05:08 Rep. Kassmier

HEARING ON SB 358**Opening Statement by Sponsor:**

16:07:09 Sen. John Esp (R), SD 30, opened the hearing on SB 358, Repeal numeric nutrient standards for water quality.

[EXHIBIT\(nah61a06\)](#)

[EXHIBIT\(nah61a07\)](#)

Proponents' Testimony:

16:12:07 Alan Olson, Montana Petroleum Association (MPA)
16:13:35 Tammy Johnson, Montana Mining Association (MMA)
16:16:46 Peggy Trenk, Treasure State Resources Association (TSRA)
16:18:51 Molly Schwend, Montana Coal Council (MCC)
16:19:40 Kelly Lynch, Montana League of Cities and Towns (MLCT)

Opponents' Testimony:

16:22:49 Abigail St. Lawrence, Montana Building Industry Association (MBIA)
16:24:25 Clayton Elliott, Trout Unlimited (TU)
16:25:16 Ruben Castren, Montana Public Interest Research Group (MontPIRG)
16:26:31 Vicki Watson, self

[EXHIBIT\(nah61a08\)](#)

16:29:42 Sam Carlson, self

[EXHIBIT\(nah61a09\)](#)

16:32:01 Betsy Baxter, self
16:35:48 Charles Sangmeister, self
16:37:57 Jerry Iverson, self
16:40:57 Sarah Zuzulock, self
16:45:07 Richard Parks, self

16:47:16 Travis Ross, Missoula City-County Health Department (MCCHD); Missoula Valley Water Quality District (MVWQD); Montana Environmental Health Association (MEHA)

EXHIBIT(nah61a10)

16:50:22 Guy Alsentzer, Upper Missouri Waterkeeper (UMW)

EXHIBIT(nah61a11)

16:54:02 Paul Hawks, self

16:56:36 Amy Seaman, Montana Audubon

16:58:53 Derf Johnson, Montana Environmental Information Center (MEIC)

Informational Testimony:

17:01:24 Myla Kelly, Department Environmental Quality (DEQ)

Questions from Committee Members and Responses:

17:03:15 Rep. Malone

17:03:41 Myla Kelly, DEQ

17:04:28 Rep. Gist

17:04:42 Myla Kelly, DEQ

17:05:15 Rep. Walsh

17:06:05 Myla Kelly, DEQ

17:06:35 Kurt Moser, Department Environmental Quality (DEQ)

17:08:16 Rep. Walsh

17:08:55 Kurt Moser, DEQ

17:09:56 Chair Gunderson

17:12:37 Tammy Johnson, MMA

17:13:24 Chair Gunderson

17:13:34 Alan Olson, MPA

17:15:25 Dave Galt, Montana Petroleum Association (MPA)

17:15:43 Chair Gunderson

17:15:53 Dave Galt, MPA

17:17:19 Vice Chair Curdy

17:17:59 Director Chris Dorrington, Department Environmental Quality (DEQ)

17:18:23 Dr. Mike Suplee, Department Environmental Quality (DEQ)

17:19:45 Vice Chair Curdy

17:22:05 Kurt Moser, DEQ

17:23:51 Rep. Putnam

17:24:42 Myla Kelly, DEQ

17:25:17 Rep. France

17:25:43 Myla Kelly, DEQ

17:26:12 Rep. France

17:27:43 Director Dorrington, DEQ

17:29:03 Tim Burton, Montana League of Cities and Towns (MLCT)

17:31:11 Rep. France

17:34:03 Tim Burton, MLCT

17:35:26 Vice Chair Curdy

17:37:14 Director Dorrington, DEQ

17:37:38 Rep. Galloway

17:40:05 Myla Kelly, DEQ

17:40:27 Director Dorrington, DEQ
17:41:17 Rep. France
17:41:47 Sen. Esp
17:42:27 Rep. France
17:42:43 Rep. Putnam
17:43:08 Tim Burton, MLCT
17:44:05 Chair Gunderson
17:44:43 Dr. Suplee, DEQ

Closing by Sponsor:

17:46:53 Sen. Esp

17:49:57 Rep. Malone
17:50:06 Chair Gunderson

ADJOURNMENT

Adjournment: 17:50:44

Jacquelynn Bomgardner, Secretary

jb

Additional Documents:

EXHIBIT([nah61aad.pdf](#))



2021 Session

Additional Documents

May include the following:

- **Business Report**
- **Roll Call - Attendance**
- **Standing Committee Reports**
- **Tabled Bills**
- **Fiscal Reports**
- **Roll Call Votes**
- **Informational Item's**
- **Witness Statements**
- **Visitor Register**
- **Any other type of documents such as:**
 - Petitions, Pamphlets, Leaflets, Brochures, Emails, all documents given to Committee Secretary 24 hours after the meeting adjourned.**

The original exhibit/items are on file at the Montana Historical Society and may be viewed there.

BUSINESS REPORT

MONTANA HOUSE OF REPRESENTATIVES 67th LEGISLATURE - REGULAR SESSION

HOUSE NATURAL RESOURCES COMMITTEE

Date: Monday, March 29, 2021

Place: Capitol

Time: 3:00 PM

Room: 172

BILLS and RESOLUTIONS HEARD:

HB 648 - Generally revise natural resource laws - Rep. Joshua Kassmier (R)

SB 358 - Repeal numeric nutrient standards for water quality - Sen. John Esp (R)

EXECUTIVE ACTION TAKEN:

SB 29 - Be Tabled

SB 40 - Be Concurred In

SB 136 - Be Concurred In

SB 165 - Be Tabled

SB 233 - Be Concurred In

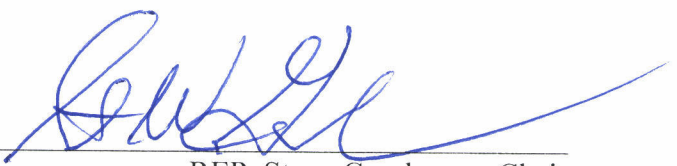
SB 249 - Be Concurred In

SB 328 - Be Concurred In As Amended

SB 348 Be Concurred In

SB 352 Be Tabled

Comments:



REP. Steve Gunderson, Chair



The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

NATURAL RESOURCES COMMITTEE

ROLL CALL

DATE: 3-29-2021

NAME	PRESENT	ABSENT/EXCUSED
CHAIR GUNDERSON	✓	
VICE CHAIR RHONDA KNUDSEN	✓	
VICE CHAIR CURDY	✓	
REP. FARRIS-OLSEN		✓
REP. FIELDER	✓	
REP. FITZGERALD	✓	
REP. FRANCE	✓	
REP. GALLOWAY	✓	
REP. GIST	✓	
REP. MALONE	✓	
REP. MARLER		✓
REP. NOLAND		✓
REP. PUTNAM	✓	
REP. WALSH	✓	
REP. WEATHERWAX	✓	

15 MEMBERS

COMMITTEE FILE COPY

BILL TABLED NOTICE

HOUSE NATURAL RESOURCES COMMITTEE

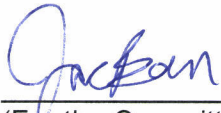
The HOUSE NATURAL RESOURCES COMMITTEE TABLED

SB 29 - Revise weather modification and control laws - Sen. Bruce Gillespie (R)

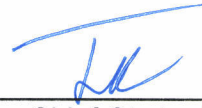
SB 165 - Generally revise laws related to the department of environmental quality - Sen. Carl Glimm (R)

SB 352 - Clarify objections to water rights - Sen. John Esp (R)

by motion, on **Monday, March 29, 2021** (PLEASE USE THIS ACTION DATE IN LAWS BILL STATUS).



(For the Committee)



(For the Chief Clerk of the House)

6:07pm

(Time)

3/29

(Date)

March 29, 2021 (5:53pm)

Jacquelynn Bomgardner, Secretary

Phone: 4067813369



HOUSE STANDING COMMITTEE REPORT

March 29, 2021

Page 1 of 1

Mr. Speaker:

We, your committee on **Natural Resources** recommend that **Senate Bill 328** (second house second reading copy -- tan) **be concurred in as amended.**

Signed: _____

Representative Steve Gunderson, Chair

To be carried by Representative Tom France

And, that such amendments read:

1. Page 14, line 24.

Strike: "may"

Insert: "shall"

2. Page 14, line 27.

Following: "82-4-231(10)(k);"

Strike: "or"

3. Page 15, line 2.

Following: "survey"

Insert: "; or

(C) the permittee has not successfully completed all reclamation activities, including water replacement, in the designated area"

- END -

Committee Vote:

Yes 12, No 3

Fiscal Note Required ☐

SB0328001SC19692.h1c

3.31.21
SR 12:51pm
(F)



HOUSE STANDING COMMITTEE REPORT

March 29, 2021

Page 1 of 1

Mr. Speaker:

We, your committee on **Natural Resources** recommend that **Senate Bill 40** (second house second reading copy -- tan) **be concurred in.**

Signed: _____

Representative Steve Gunderson, Chair

To be carried by Representative Willis Curdy

- END -

Committee Vote:

Yes 15, No 0

Fiscal Note Required ☐

SB0040001SC16496.h1c

3-30-21
JR 11:28AM
(2)



HOUSE STANDING COMMITTEE REPORT

March 29, 2021

Page 1 of 1

Mr. Speaker:

We, your committee on **Natural Resources** recommend that **Senate Bill 136** (second house second reading copy -- tan) **be concurred in.**

Signed: _____

Representative Steve Gunderson, Chair

To be carried by Representative Steven Galloway

- END -

Committee Vote:

Yes 15, No 0

Fiscal Note Required ☐

SB0136001SC19673.hlc

3.30.21
JR 11:29 AM
Ⓢ



HOUSE STANDING COMMITTEE REPORT

March 29, 2021

Page 1 of 1

Mr. Speaker:

We, your committee on **Natural Resources** recommend that **Senate Bill 233** (second house second reading copy -- tan) **be concurred in.**

Signed: _____

Representative Steve Gunderson, Chair

To be carried by Representative Brian Putnam

- END -

Committee Vote:

Yes 14, No 1

Fiscal Note Required ☐

SB0233001SC19617.h1c

3-30-21
JP 11:30AM
(F)



HOUSE STANDING COMMITTEE REPORT

March 29, 2021

Page 1 of 1

Mr. Speaker:

We, your committee on **Natural Resources** recommend that **Senate Bill 249** (second house second reading copy -- tan) **be concurred in.**

Signed: _____

Representative Steve Gunderson, Chair

To be carried by Representative Rhonda Knudsen

- END -

Committee Vote:

Yes 15, No 0

Fiscal Note Required ☐

SB0249001SC18718.h1c

3.30.21
TR 11:34AM
②



HOUSE STANDING COMMITTEE REPORT

March 29, 2021

Page 1 of 1

Mr. Speaker:

We, your committee on **Natural Resources** recommend that **Senate Bill 348** (second house second reading copy -- tan) **be concurred in.**

Signed: _____

Representative Steve Gunderson, Chair

To be carried by Representative Kenneth Walsh

- END -

Committee Vote:

Yes 15, No 0

Fiscal Note Required ☐

SB0348001SC19685.hlc

3-30-21
JR 11:33 AM
(F)



The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

NATURAL RESOURCES COMMITTEE

ROLL CALL VOTE

BILL NUMBER SB 352

DATE 3-29-2021

MOTION Be Tabled

NAME	YES	NO	PROXY
VICE CHAIR, RHONDA KNUDSEN	✓		
VICE CHAIR, CURDY	✓		
REP. NOLAND	✓		✓
REP. MALONE		✓	
REP. FARRIS-OLSEN	✓		
REP. FIELDER		✓	
REP. GIST	✓		
REP. GALLOWAY		✓	
REP. MARLER	✓		
REP. PUTNAM	✓		
REP. FRANCE	✓		
REP. FITZGERALD		✓	
REP. WEATHERWAX	✓		
REP. WALSH	✓		
CHAIR, GUNDERSON	✓		

15 MEMBERS



The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

NATURAL RESOURCES COMMITTEE

ROLL CALL VOTE

BILL NUMBER SB 328

DATE 3-29-2021

MOTION Do Pass Amendment 328.1.1

NAME	YES	NO	PROXY
VICE CHAIR, RHONDA KNUDSEN		✓	
VICE CHAIR, CURDY	✓		
REP. NOLAND		✓	✓
REP. MALONE		✓	
REP. FARRIS-OLSEN	✓		
REP. FIELDER		✓	
REP. GIST	✓		
REP. GALLOWAY		✓	
REP. MARLER	✓		✓
REP. PUTNAM	✓		
REP. FRANCE	✓		
REP. FITZGERALD	✓		
REP. WEATHERWAX	✓		
REP. WALSH		✓	
CHAIR, GUNDERSON		✓	

15 MEMBERS



The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

NATURAL RESOURCES COMMITTEE

ROLL CALL VOTE

BILL NUMBER SB 328

DATE 3-29-2021

MOTION Be Concurred in As Amended

NAME	YES	NO	PROXY
VICE CHAIR, RHONDA KNUDSEN	✓		
VICE CHAIR, CURDY	✓		
REP. NOLAND	✓		✓
REP. MALONE		✓	
REP. FARRIS-OLSEN	✓		
REP. FIELDER		✓	
REP. GIST	✓		
REP. GALLOWAY	✓		
REP. MARLER	✓		✓
REP. PUTNAM	✓		
REP. FRANCE	✓		
REP. FITZGERALD	✓		
REP. WEATHERWAX	✓		
REP. WALSH	✓		
CHAIR, GUNDERSON		✓	

15 MEMBERS



The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

NATURAL RESOURCES COMMITTEE

ROLL CALL VOTE

BILL NUMBER SB 165

DATE 3-29-2021

MOTION Be Tabled

NAME	YES	NO	PROXY
VICE CHAIR, RHONDA KNUDSEN		✓	
VICE CHAIR, CURDY	✓		
REP. NOLAND		✓	✓
REP. MALONE		✓	
REP. FARRIS-OLSEN	✓		
REP. FIELDER		✓	
REP. GIST		✓	
REP. GALLOWAY		✓	
REP. MARLER	✓		✓
REP. PUTNAM	✓		
REP. FRANCE	✓		
REP. FITZGERALD	✓		
REP. WEATHERWAX	✓		
REP. WALSH	✓		
CHAIR, GUNDERSON		✓	

15 MEMBERS



The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

NATURAL RESOURCES COMMITTEE

ROLL CALL VOTE

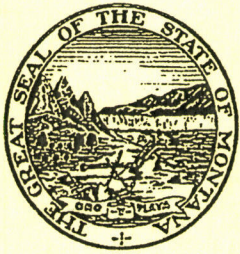
BILL NUMBER SB 29

DATE 3-29-2021

MOTION Be Tabled

NAME	YES	NO	PROXY
VICE CHAIR, RHONDA KNUDSEN	✓		
VICE CHAIR, CURDY	✓		
REP. NOLAND	✓		✓
REP. MALONE	✓		
REP. FARRIS-OLSEN	✓		
REP. FIELDER	✓		
REP. GIST	✓		
REP. GALLOWAY	✓		
REP. MARLER	✓		✓
REP. PUTNAM		✓	
REP. FRANCE		✓	
REP. FITZGERALD		✓	
REP. WEATHERWAX	✓		
REP. WALSH		✓	
CHAIR, GUNDERSON		✓	

15 MEMBERS



The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES
AUTHORIZED
COMMITTEE PROXY
67TH LEGISLATIVE SESSION

I request to be excused from the Natural Resources Committee.

I desire to leave my proxy vote with Rep. Rhonda Knudsen.

PLEASE USE PEN

BILL	MOTION (Include AMENDMENT #)	AYE	NO
Amend SB29	29.2.1	y	
SB29	Table	y	
SB40	do concur	y	
SB136	do concur	y	
Amend 1165	do pass	y	
SB165	Table		N
SB233	do concur	y	
SB249	do concur	y	

BILL	MOTION (Include AMENDMENT #)	AYE	NO
Amend. SB328	do pass		N
SB328	do concur	y	
SB348	do concur	y	
Amend SB352	do pass		N
SB352	table	y	

I authorize my vote to be matched with that of Rep. Rhonda Knudsen, Vice Chair
for any amendments proposed on this date.

Rep. Mark Noland
(Signature)

Rep. Noland
(Print Name)

03/29/2021
(Meeting Date)



The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES
AUTHORIZED
COMMITTEE PROXY
67TH LEGISLATIVE SESSION

I request to be excused from the Natural Resources Committee.

I desire to leave my proxy vote with Rep. Curdy

PLEASE USE PEN

BILL	MOTION (Include AMENDMENT #)	AYE	NO	BILL	MOTION (Include AMENDMENT #)	AYE	NO
SB 29	Amendment ^{Do Pass} SB 29.2.1	X		SB 352	Amendment ¹ 352.2.1	X	
SB 29	Table	X		SB 352	Table	X	
SB 40	Do Concure	X					
SB 136	Do Concure	X					
SB 165	Amend 165.1.1 Do Pass	X					
SB 165	Amend 165.1.2 Do Pass	X					
SB 165	Table	X					
SB 293	Do Concure	X					
SB 249	Do Concure	X					
SB 328	Amend 328.6.1 Do Pass	X					
SB 329	Do Concure	X					
SB 346	Do Concure	X					

I authorize my vote to be matched with that of Rep. Curdy
for any amendments proposed on this date.

Rep. Marilyn Marler
(Signature)

Marilyn Marler
Rep. Curdy
(Print Name)

3-29-2021
(Meeting Date)

2021 Legislative Session

WITNESS STATEMENTS

**The following is an assortment of
documents that are witness
statements.**

**“A witness statement is a signed document
recording the evidence of a witness. A
definition “a written statement signed by a
person which contains the evidence which that
person would be allowed to give orally.”**

LEG Committee-House Natural Resource testimony

From: leg-noreply@mt.gov
Sent: Friday, March 26, 2021 11:44 AM
To: LEG Applications Email Backup; LEG Committee-House Natural Resource testimony
Subject: Public Comment for Bill SB-358: Repeal numeric nutrient standards for water quality
2021-03-29 03:00 PM - (H) Natural Resources Successfully Submitted on 03-26-21 11:43

Details:

Bill: SB-358: Repeal numeric nutrient standards for water quality 2021-03-29 03:00 PM - (H) Natural Resources

Position: Opponent

Representing an Entity/Another Person: Yes

Organization: League of Women Voters Montana

Name: Nancy Leifer

Email: nancleifer@gmail.com

Phone: (406) 207-9114

City, State: Missoula, Montana

Written Statement: Testimony SB358

Submitted March 26 to House Natural Resources Committee Nancy Leifer, on behalf of the League of Women Voters Montana

The League of Women Voters of Montana is a non-partisan organization, founded 101 years ago, that takes positions on issues after a process of study, discussion and consensus. The League opposes SB 358.

The League supports the preservation of the physical, chemical, and biological integrity of the ecosystem and maximum protection of public health and the environment. SB 358 would repeal nutrient standards for Montana rivers and thereby threaten water quality in Montana's pristine waters. With the warming of the climate, nutrient standards are even more critical in preventing biological degradation of Montana's water ecosystems.

Please oppose SB 358. Thank you for this opportunity to submit testimony.

Files:

Testify via Zoom: No

Zoom Method: N/A

LEG Committee-House Natural Resource testimony

From: leg-noreply@mt.gov
Sent: Friday, March 26, 2021 11:03 AM
To: LEG Applications Email Backup; LEG Committee-House Natural Resource testimony
Subject: Public Comment for Bill HB-648: Generally revise natural resource laws 2021-03-29 03:00 PM - (H) Natural Resources Successfully Submitted on 03-26-21 11:02

Details:

Bill: HB-648: Generally revise natural resource laws 2021-03-29 03:00 PM - (H) Natural Resources

Position: Opponent

Representing an Entity/Another Person: No

Organization: N/A

Name: Hannah P Hernandez

Email: precambrianmt@hotmail.com

Phone: (406) 638-1149

City, State: Troy, MT

Written Statement: To House Natural Resources Committee,

Oppose HB 648.

Instead encouraging continued reliance on fossil fuels and development of a resource that is contributing to climate change it would be prudent to have the bureau of mines and geology assess how to reclaim, restore, and rejuvenate sites impacted from fossil fuel extraction and how to develop geothermal energy resources in the state. This bill does nothing to help Montana become a leader in the 21st century and develop renewable resources in the state.

Vote NO HB 648.

Thank you.

Hannah Hernandez

Files:

Testify via Zoom: No

Zoom Method: N/A



BACKCOUNTRY
HUNTERS & ANGLERS
MONTANA

**WITNESS
STATEMENT**

March 29, 2021

Chairman Gunderson and members of the House Natural Resources Committee,

The Montana Chapter of Backcountry Hunters & Anglers submits this letter for the record in opposition to SB 358.

Montana BHA opposes SB 358 because it aims to allow more nutrient pollution in our waterways. On its face, the bill eliminates the existing numeric nutrient standards and forces the Montana Department of Environmental Quality (MDEQ) to promulgate new rules pursuant to the reduced water quality criteria stated in the Bill. More specifically, the bill would mandate MDEQ to weigh the addition of new nitrogen and phosphorus pollution in relation to the amount of pollution already existing in the source. In other words, if a stream is already impaired with nitrogen and phosphorus pollution, it would be possible for new polluters to come along and receive a permit to impair the stream even further.

Nutrient pollution is caused by excess nitrogen and phosphorus in the air and water and is one of America's most widespread, costly and challenging environmental problems. These naturally occurring nutrients play an important part in aquatic ecosystems, but too much nitrogen and phosphorus in the water causes algae to grow faster than ecosystems can handle, leading to harmful algal blooms. Significant increases in algae harm not just water quality, but important wildlife habitats and food resources. Large growths of algae, as seen recently in many of Montana's rivers and streams, can severely reduce or eliminate oxygen in the water, leading to illnesses or death of large numbers of fish.



WWW.BACKCOUNTRYHUNTERS.ORG/MONTANA_BHA
MONTANA@BACKCOUNTRYHUNTERS.ORG

Unfortunately, this is already occurring in such famous Montana streams such as the Gallatin, Yellowstone, Clark Fork and Bitterroot. The waterways are not only an important part of our state's recreational heritage, but they are critical drivers of an enormous economic sector. Fishing outfitting and tourism alone brings Montana more than \$100 million per year. In fact, according to the UM Tourism Institute, over 39% of all tourists who hired an outdoor recreation service in Montana participated in rafting, floating, canoeing and kayaking, making them the highest-ranking activities in the state.

We urge you to vote no on SB 358 because protecting water quality in Montana is not just important to our environment, but also to our economy.

Respectfully,



John B. Sullivan III

Chairman / Montana Chapter
Backcountry Hunters & Anglers
montana@backcountryhunters.org



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MONTANA@BACKCOUNTRYHUNTERS.ORG

①

HB 648 - Generally revise natural resource laws

PLEASE PRINT

[illegible]

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

Monday, March 29, 2021

SB 358 - Repeal numeric nutrient standards for water quality

Sponsor: **Sen. John Esp (R)**

PLEASE PRINT

[illegible]

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

House Natural Resources Committee Testimony Requests

Meeting: 03/29/2021

Bill	Name	Position	Location	Email	Affiliation
HB-648	Amy Seaman	Opponent	Helena	aseaman@mtaudubon.org	Montana Audubon
HB-648	Derf Johnson	Opponent	Helena	djohnson@meic.org	Montana Environmental Information Center
SB-358	Kelly Lynch	Proponent	Helena	kelly.lynch@mtleague.net	Montana League of Cities and Towns
SB-358	Amy Seaman	Opponent	Helena	aseaman@mtaudubon.org	Montana Audubon
SB-358	Derf Johnson	Opponent	Helena	djohnson@meic.org	Montana Environmental Information Center
SB-358	Dr. Samuel Paul Carls	Opponent	Bozeman	sam.p.carlson@gmail.com	N/A
SB-358	Travis Ross	Opponent	Missoula	tross@missoulacounty.us	MEHA, Msla City-Co Health Dept
SB-358	Richard Parks	Opponent	Gardiner	richard@parksflyshop.com	N/A
SB-358	Charles Sangmeister	Opponent	Nye	lcsangmeister@nemontel.net	N/A
SB-358	Paul Hawks	Opponent	McLeod	hawks@mtintouch.net	N/A
SB-358	Sarah Zuzulock	Opponent	Bozeman	sarah@zuzulockenvironmer	N/A
SB-358	Jerry Iverson	Opponent	Big Timber	jliverson@outlook.com	N/A
SB-358	Betsy Baxter	Opponent	Big Timber	mebaxter@hotmail.com	N/A
SB-358	Vicki Watson	Opponent	Missoula	h2oshed1@hotmail.com	N/A
SB-358	Guy Alsentzer	Opponent	Bozeman	guy@uppermissouriwaterke	Upper Missouri Waterkeeper
SB-358	Kurt Moser	Informational Witness	Helena	KMoser2@mt.gov	DEQ